

IN THE COURT OF COMMON PLEAS  
OF FRANKLIN COUNTY, OHIO

State of Ohio, ex rel., :  
Betty D. Montgomery, :  
Plaintiff, :  
v. : Case No. 97 CVH05-5114  
Philip Morris, Inc., :  
et al., :  
Defendants. :

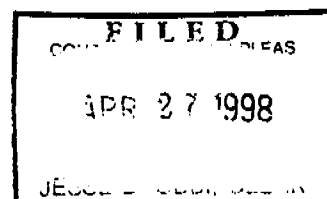
DEPOSITION OF RAYMOND W. RIZZO

Taken at Hahn, Loeser  
and Parks  
10 West Broad Street  
Columbus, Ohio 43215  
April 20, 1998  
1:05 o'clock p.m.

SPECTRUM REPORTING II, INC.  
155 West Main Street, Suite 101

Columbus, Ohio 43215

(614) 224-0900



## A P P E A R A N C E S

## REPRESENTING THE PLAINTIFF:

Charles Rockwell Saxbe, Esq.  
Elizabeth J. Watters, Esq.  
Chester, Willcox & Saxbe  
17 South High Street  
Columbus, Ohio 43215  
and  
Alan Schwepe, Esq.  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43215

## REPRESENTING THE DEFENDANT PHILIP MORRIS, INC.:

Michael Yarbrough, Esq.  
Frost & Jacobs, LLP  
10 West Broad Street  
Columbus, Ohio 43215

## REPRESENTING THE DEFENDANT TOBACCO INSTITUTE:

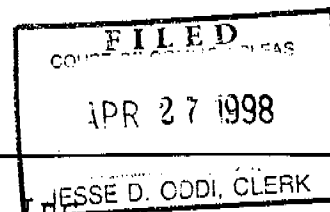
Laird Hart, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044

## REPRESENTING THE DEFENDANT RAYMOND W. RIZZO:

Charna Sherman, Esq.  
Hahn, Loeser & Parks  
3300 BP America Building  
Cleveland, Ohio 44122

REPRESENTING THE DEFENDANT RJR NABISCO, INC., RJR  
NABISCO HOLDINGS:

Matthew A. Kairis, Esq.  
Jones, Day, Reavis & Pogue  
1900 Huntington Center  
Columbus, Ohio 43215



1 REPRESENTING THE DEFENDANT B.A.T. INDUSTRIES, PLC:

2 Randall Rainer, Esq.  
3 Simpson, Thacher & Bartlett  
4 425 Lexington Avenue  
5 New York, New York 10017  
6  
7  
8  
9  
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APR 27 1998

JESSE D. ODDI, CLERK

Monday Afternoon Session

April 20, 1998

1:05 o'clock p.m.

S T I P U L A T I O N S

It is stipulated by and between counsel for the respective parties that the deposition of RAYMOND W. RIZZO, a Defendant herein, called by the Plaintiff for cross-examination under the statute, may be taken at this time by the Notary pursuant to notice and stipulations of counsel; that said deposition may be reduced to writing in stenotypy by the Notary, whose notes may then after be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived.

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APR 27 1998

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1 MR. SAXBE: Mr. Rizzo, welcome. I think  
2 everyone has made an appearance on the record. I'm  
3 Charles Saxbe representing the State of Ohio and,  
4 Mr. Hart, did you wish to make a statement?

5 MR. HART: I appreciate that, counsel. I  
6 just wanted to say at the beginning of the  
7 deposition for the record something I've already  
8 said to Mr. Saxbe off the record, which is that the  
9 Tobacco Institute intends to conduct all of its  
10 litigation with the utmost courtesy and  
11 reasonableness. The court has allowed Plaintiffs to  
12 take an 8-hour deposition or the deposition of no  
13 more than eight hours with respect to the Tobacco  
14 Institute's nonlobbying contacts with Ohio, if any.

15 The term lobbying is actually relatively  
16 recent. It's defined in very different ways in the  
17 different statutes and legislation, and it is the  
18 Tobacco Institute's position that all of its  
19 contacts with Ohio are related to lobbying, either  
20 directly or at least incidentally. Instead of  
21 wasting time here arguing about whether a particular  
22 activity is or is not incidental to lobbying, the  
23 Tobacco Institute is going to give Plaintiffs the  
24 broadest reasonable latitude to explore everything

1       that the Tobacco Institute does or has any  
2       relationship to Ohio.

3               I just want it clearly understood that  
4       the Tobacco Institute in allowing such questions  
5       does not waive but in fact expressly preserves its  
6       position that everything the witness does  
7       constitutes or is at least incidental to lobbying.

8               The other point I'd like to say in the  
9       beginning is we were asked to provide a copy of  
10      Mr. Rizzo's resume, again, without prejudice to the  
11      judge's ruling and document production. We're happy  
12      to provide that document now.

13              MR. SAXBE: Thank you.

14              MS. SHERMAN: May I add to Mr. Hart's  
15      comments just a few things. One is that the judge  
16      specifically ruled at our last conference with her  
17      that the relevant time frame concerning TI's  
18      nonlobbying contacts with the State of Ohio is from  
19      May 8, 1995, to May 8, 1997, which is the two years  
20      directly preceding the filing of the instant  
21      complaint.

22              I'd also like to state for the record  
23      that the State has elected not to proceed pursuant  
24      to Ohio Rule 30(b)(5); that that rule would have

1 provided the Tobacco Institute the right to choose  
2 the deponent most knowledgeable on the matters that  
3 the judge desired this deposition to be about.

4 The State did not adhere to that part of  
5 the judge's ruling but chose themselves to choose  
6 this deponent and, therefore, the Tobacco Institute  
7 cannot represent that Mr. Rizzo is the most  
8 knowledgeable on those matters that this deposition  
9 is supposed to be about and does not speak for the  
10 corporation in that sense. He is knowledgeable  
11 personally about some of those matters and will  
12 speak to those in this deposition to the extent you  
13 inquire about them.

14 Finally, this deposition is occurring in  
15 Columbus only by agreement between the parties.  
16 That appearance is without waiver of any of TI's  
17 assertions that the court lacks jurisdiction over TI  
18 and it is without prejudice; that in the future may  
19 still object to any place of a deposition in the  
20 future and the requirements, if any, to subpoena any  
21 witness noticed.

22 MR. SAXBE: Anybody else have any  
23 statements or speeches or comments?

24 MR. YARBROUGH: No.

1 MR. SAXBE: The only pre-deposition  
2 matter that the State would put on the record is  
3 Mr. Hart and I did discuss in advance of the  
4 deposition the fact that he is not admitted to  
5 practice in the State of Ohio; that he has not made  
6 application to appear in this matter. I do not  
7 believe that his law firm, Covington & Burling, has  
8 made an appearance in this case. However, Mr. Hart  
9 has indicated that he is sensitive to the Rules of  
10 Professional Responsibility and will abide by them.

11 It should also be noted for the record  
12 that his law firm, Covington & Burling, is special  
13 counsel for the State of Ohio in other matters. And  
14 to the State of Ohio's knowledge there has been no  
15 waiver of any conflict sought by Covington & Burling  
16 from the State of Ohio, and that issue remains  
17 outstanding.

18 RAYMOND W. RIZZO

19 Being by me first duly sworn, as hereinafter  
20 certified, deposes and says as follows:

21 CROSS-EXAMINATION

22 BY MR. SAXBE:

23 Q. Good afternoon, Mr. Rizzo.

24 A. Good afternoon.



1 Q. Mr. Rizzo, at the beginning of this  
2 deposition your counsel, Mr. Hart, provided me with  
3 a copy of what appears to be a resume, which I will  
4 mark for your review, and if you could identify that  
5 document. Everyone have a copy?

6 MR. RAINER: Did you give that a number,  
7 Rocky?

8 MR. SAXBE: Plaintiff's Exhibit 1.

9 THE WITNESS: Yes, I do recognize that as  
10 my resume.

11 Q. And that reflects [DELETED]  
12 as your residential address?

13 A. That's right.

14 Q. And it appears that you have resided and  
15 worked in Indiana most of your career, and I presume  
16 that you are a registered voter in the state of  
17 Indiana?

18 A. I am.

19 Q. And it looks like you're a Republican,  
20 too?

21 A. Yes, I am.

22 Q. A graduate of Butler University with a  
23 Bachelor's and a Master's degree. And it sets forth  
24 your employment back to 1966 when you began your

1 career as a teacher.

2 A. That's right.

3 Q. And since you left the teaching  
4 profession in 1966 you have been involved in one way  
5 or the other in political activity?

6 A. Governmental and political activity, yes,  
7 corporate, either as a part of government or in the  
8 corporate world.

9 Q. And you've been employed by the Tobacco  
10 Institute since July of 1976?

11 A. No, July of 1996, July 1, 1996.

12 Q. And how did you happen to gain employment  
13 with the Tobacco Institute?

14 A. The senior vice-president for state  
15 activities of the Tobacco Institute is Pat Donoho.  
16 Pat Donoho is a friend of mine. We grew up together  
17 in the chain drug industry, he with Revco, me  
18 originally with Hook Drugs and then Hook-SuperX.  
19 And through the contacts that we had through the  
20 National Association of Chain Drugstores  
21 representing our respective companies and through  
22 contacts among various of the state retail  
23 associations and organizations I have known Pat  
24 Donoho since, really, since my start with Hook's.

1                   And he left Revco about eight years ago  
2                   to go with the Tobacco Institute. When HSI merged,  
3                   strangely enough, with Revco Drugs in 1994, he knew  
4                   at that time that I was available. He called and  
5                   inquired as to my -- as to whether or not I was  
6                   interested in coming with the Tobacco Institute at  
7                   that time.

8                   At that time the states that he needed a  
9                   person for were all located in the West, and I told  
10                  him that family and circumstances did not allow me  
11                  to move from Indianapolis. In March of 1996 the  
12                  Region II position, which is Indiana, Illinois, Ohio  
13                  and Michigan, became vacant when the then incumbent,  
14                  Bob Pruett, left the Tobacco Institute for a  
15                  position with Brown & Williamson Corporation. He  
16                  called me up shortly after that and said that he had  
17                  an opening in Indiana, Illinois, Ohio and Michigan,  
18                  was I interested. I told him I was. We started  
19                  talking and that culminated with my start with TI in  
20                  the first of July of 1996.

21                Q.                  And who was your predecessor who went to  
22                  Brown & Williamson?

23                A.                  Bob Pruett.

24                Q.                  And how long had Mr. Pruett been with

1 TI?

2 A. I believe, and I don't know for certain,  
3 but it was something in the range of -- I really  
4 don't -- it was less than ten years. I do know  
5 that.

6 Q. What kind of training and instructions  
7 did you receive upon being employed by TI? I'll  
8 call Tobacco Institute TI if that's okay.

9 A. Surely. Basically the training was with  
10 regard to the nature of the Tobacco Institute, the  
11 nature of the corporation itself, the various  
12 divisions of the organization and the general nature  
13 of how the association functioned and the specific  
14 people that were involved at the Washington level,  
15 what their responsibilities were, those types of  
16 things. And then on the regional level primarily  
17 the process of breaking in to the new position was  
18 handled by Ron Morris, who is the senior in terms of  
19 length of time, regional vice-president with TI.  
20 Ron had been filling the capacity on an interim  
21 basis between the time of Bob Pruett's departure and  
22 my start on the job. And we worked together for  
23 approximately eight weeks, familiarizing me with the  
24 people and so on and so forth.

1 Q. Your office is in Indianapolis?

2 A. Greenwood, Indiana, actually, yes,  
3 southern suburb of Indianapolis.

4 Q. Well, I see the Region II consists of the  
5 states of Indiana, Ohio, Michigan and Illinois?

6 A. That's correct.

7 Q. Have you ever been a party in any lawsuit  
8 or litigation before, Mr. Rizzo, personally?

9 A. Personally, no.

10 Q. Have you ever been a witness in a lawsuit  
11 or a trial or a hearing or any type of litigation?

12 A. Yes, I have.

13 Q. And could you tell me what instances  
14 those were?

15 A. This was shortly after my departure from  
16 the Governor's office in Indiana. It was within a  
17 couple years after. There was litigation that had  
18 to do with the budget-making process, and I was in  
19 Governor Bowen's office. I was executive assistant  
20 for legislative affairs and I was called to testify  
21 in that case as to specific procedures.

22 Q. Have you been a witness in any other  
23 matters?

24 A. I'm trying to think. I do not believe

1 so. I can't recall anything.

2 Q. Have you attended any trials or court  
3 hearings where you weren't a party or you weren't a  
4 witness?

5 A. Other than one time while I was on a jury  
6 in a civil trial, no.

7 Q. Have you participated in preparing anyone  
8 for trial or testimony as a witness or for a  
9 lawsuit?

10 A. No.

11 Q. Have you been involved in any cases in  
12 the State of Ohio, any lawsuits, any filed cases in  
13 the State of Ohio?

14 A. The only thing that maybe was, as I said,  
15 I was corporate secretary for Hook-SuperX.  
16 Corporate secretary is always a named officer or is  
17 a named litigant. So it's possible that my name  
18 appears because of my position, but no.

19 Q. But with TI you haven't --

20 A. No, no, not at all.

21 MS. SHERMAN: Can I just ask that you let  
22 him finish his question before you answer.

23 THE WITNESS: Sure.

24 Q. Have you received since you became an

1 employee of TI any training or instruction in  
2 litigation or in giving testimony?

3 A. No, I have not.

4 Q. Have you reviewed any pleadings or  
5 documents related to the pending litigation in the  
6 State of Ohio involving the State of Ohio and  
7 Defendants in this present action?

8 A. I have not.

9 Q. Have you conferred with any attorneys  
10 with respect to your testimony in this case?

11 A. Other than brief general discussion with  
12 my attorneys this morning relative to the basic  
13 nature of the process of deposition, no.

14 Q. And you're speaking of Mr. Hart and  
15 Ms. Sherman?

16 A. I am.

17 Q. Anybody else?

18 A. No.

19 Q. Have you discussed the fact that you were  
20 to be a witness here today with anyone other than  
21 your attorneys?

22 A. Only in passing to Mr. Donoho, my boss.

23 Q. And was Mr. Donoho the only person that  
24 you discussed this with?

1 A. I'm trying to recall conversations. It  
2 is possible. It's likely, I do recall, that I would  
3 have made a comment in passing that on Monday of  
4 this week I would be involved in making a deposition  
5 as I talked to the corporate representatives of  
6 Region II with whom I regularly confer just on a  
7 daily basis.

8 Q. When you say corporate representatives,  
9 to whom are you referring?

10 A. Specifically, the member companies of the  
11 Tobacco Institute that have governmental affairs,  
12 personnel who have regional, state and local  
13 governmental affairs responsibility.

14 Q. How did you come to have that discussion  
15 with them?

16 A. Well, as I say, usually on a daily basis  
17 I will -- we will be on the phone discussing  
18 activities, governmental activities, in the states  
19 that we share in common in those four states.

20 Q. And was this a conference call that you  
21 were involved in with the corporate representatives  
22 or were these individual conversations?

23 A. It would have been individual  
24 conversations.



1 Q. Who are the corporate representatives  
2 with whom you regularly communicate?

3 A. Philip Morris Corporation it's Derek  
4 Crawford. For Brown & Williamson it's Michael  
5 Shannon. For U.S. Tobacco it's Brian Fojtik,  
6 spelled F-O-J-T-I-K, and for RJR it's Hurst  
7 Campbell, or excuse me, Hurst Marshall.

8 Q. Mr. Rizzo, are all these gentlemen  
9 located in the state of Indiana where you are?

10 A. No, they are -- they may be regionally  
11 located, such as Brian Fojtik with UST is located on  
12 Chicago. Hurst Marshall's office is in  
13 Winston-Salem, North Carolina. Michael Shannon is  
14 located in Louisville, Kentucky. Derek Crawford is  
15 located in Cincinnati.

16 Q. And did these gentlemen have  
17 responsibility for their companies within Region II?

18 A. Yes.

19 Q. Are there any other persons with whom you  
20 discussed your appearing here today?

21 A. I believe that's all.

22 Q. And when I refer to their Region II, is  
23 it the same Region II as the TI has created?

24 A. Not necessarily, no, no. Each company,

1 depending on how their operation is configured, they  
2 may or may not have -- I may or may not have the  
3 same company people in each state, depending on how  
4 they're set up.

5 Q. Are these gentlemen each responsible for  
6 their company's activities in the State of Ohio?

7 A. With regard to governmental affairs and  
8 public relations, yes.

9 MR. KAIRIS: Rocky, if I could interject  
10 with a clarification question. When you referred to  
11 Hurst Marshall for RJR, were you speaking of R. J.  
12 Reynolds Tobacco Company?

13 THE WITNESS: That's right.

14 Q. Mr. Rizzo, did you prepare in any way for  
15 this deposition other than your brief meeting with  
16 your attorneys this morning and your conversations  
17 this morning or your recent conversations with the  
18 corporate representatives you've identified?

19 A. No.

20 Q. Did you review any documents related to  
21 this litigation?

22 A. No, I did not.

23 Q. Did you review any documents that relate  
24 to the Tobacco Institute and its activities within

1 the State of Ohio?

2 A. No, I did not.

3 Q. Have you, Mr. Rizzo, had an occasion to  
4 review any pleadings, any filings by parties in this  
5 litigation? And when I refer to this litigation,  
6 I'm talking about the Ohio --

7 A. The Ohio Medicaid case?

8 Q. Right.

9 A. No, I have not.

10 Q. I give you what's been marked as  
11 Plaintiff's Exhibit 2. Can you identify that  
12 document?

13 A. This is the first time I've seen it.

14 Q. On the third page of -- I'm sorry, the  
15 fourth page, it's marked page 4, we're missing  
16 apparently page 3?

17 A. Yes, we are.

18 MS. WATTERS: We took this right off the  
19 service copy that we had.

20 Q. Well, presuming that there is a page 3,  
21 on page 4 there is a signature there William A.  
22 Adams. Do you recognize that signature?

23 A. I do.

24 Q. Attached to this document and identified

1 in paragraphs 5 and 6 is the certificate of  
2 incorporation for the Tobacco Institute. Have you  
3 ever seen that document or reviewed it?

4 A. I have not.

5 Q. Are you familiar with the business  
6 purposes of the Tobacco Institute?

7 A. Can you -- in what way? Have I read a  
8 document or anything of that nature? I have not.

9 Q. And you didn't review this affidavit or  
10 any other affidavits of any persons prior to  
11 appearing here today?

12 A. I did not.

13 Q. Did you have any discussions with any  
14 individuals within the State of Ohio with respect to  
15 your testimony here today?

16 A. No, I did not.

17 Q. Did you talk to --

18 MS. SHERMAN: Other than who he already  
19 identified for you? He identified one individual in  
20 Cincinnati.

21 Q. Yes, other than the individual you've  
22 identified.

23 A. I'm trying to think. I may have said  
24 something in passing that I was going to be involved

1 in this with people in Ohio, but I can't recall  
2 specifically. It wasn't of any significant nature.

3 Q. Have you discussed this matter with  
4 Mr. Adams?

5 A. I have not.

6 Q. How about with any of TI's --

7 A. Let me ask -- excuse me for  
8 interrupting. Define discussed. I mean, obviously,  
9 Mr. Adams knew that I had been deposed and I made a  
10 comment in passing that I was -- that I had been  
11 deposed, but we did not have a discussion about it,  
12 either what it was about or anything of any nature  
13 or any significance or anything like that. I do not  
14 -- I would not define discussed as, you know,  
15 making a comment in passing. Discussing to me is  
16 discussing.

17 Q. You've talked with Mr. Adams in the last  
18 week, and he knows that you're going to be here  
19 today?

20 A. Yes, yes, yes.

21 Q. How about anyone in Ohio aside from the  
22 gentleman in Cincinnati? Have you talked with Pete  
23 O'Grady and mentioned in passing you're going to be  
24 here?

1       A.           Yes, I did. I told Pete, I talked to  
2       Pete on Friday -- or, excuse me, Wednesday and told  
3       him that I would be here, that I was involved in  
4       this and it's also -- I talked with Brooke Cheney.  
5       I'm trying to think who else I might have spoken  
6       to. It's possible Andy Herf at the Ohio Retailers.

7       Q.           Have you talked to anyone in Ohio with  
8       respect to the State's efforts to acquire documents  
9       that relate to this litigation, such as Mr. Herf or  
10      Mr. O'Grady?

11      A.           No, only to the extent that a comment was  
12      made that there had been a request for documents  
13      relative to the Tobacco Institute. That's the  
14      extent of any knowledge or discussion I may have  
15      had.

16      Q.           Did you talk with anyone at the Ohio  
17      Grocers Association?

18      A.           I'm trying to think. I talked to Bill  
19      Jackson, and that was about another matter. I don't  
20      recall that there was -- he may have said something  
21      in passing, but I can't specifically recall  
22      anything. It didn't register in any fashion.

23      Q.           How about have you talked about your  
24      appearance here today or about the State's efforts

1 to acquire documents about TI with anyone from the  
2 Ohio Candy and Tobacco Distributors Association?

3 A. I don't believe that I have.

4 Q. How about the retail beer and wine  
5 people?

6 A. No.

7 Q. Mr. Rizzo, looking at your resume, you  
8 indicate that you are the vice-president of the  
9 Tobacco Institute. What does that job encompass?

10 A. Basically it's a -- the regional  
11 vice-president for state activities has a primary  
12 responsibility of coordination, communication and  
13 development of overall lobby strategy on behalf of  
14 the Tobacco Institute as it relates to activities of  
15 state and local government in those four states.  
16 It's primarily monitoring responsibility and  
17 coordinating the development of lobby strategy on  
18 behalf of the industry, and that's the primary  
19 responsibilities.

20 Q. Are you the head person of the Region II  
21 office? Are there any -- do you have --

22 A. Myself and a secretary.

23 Q. Any other employees in your office?

24 A. No.

1 Q. And you have indicated that the only  
2 activity you engage in is lobbying activity?

3 A. Lobbying is a -- give me your definition  
4 of lobbying, and I'll tell you whether I do it.

5 Q. Why don't you give me your definition of  
6 lobbying, and it will help me out.

7 A. I consider my responsibilities to be  
8 lobbying responsibilities. If you're talking about  
9 direct face-to-face lobbying, speaking to people  
10 one-on-one, I do very little of that. Primarily my  
11 responsibilities are to develop a coordinated lobby  
12 approach on behalf of the industry in those four  
13 affected states, identify what are the issues,  
14 what's the information that needs to be provided,  
15 what's the best forum to communicate that  
16 information and to coordinate the activity. But in  
17 terms of if you're talking about lobbying from the  
18 perspective of individual meetings with specific  
19 legislators, specific persons, I do very little of  
20 that.

21 Q. When you were first hired and Ron Morris  
22 broke you in, what did he tell you about the State  
23 of Ohio and the nature of the State of Ohio with  
24 respect to your duties as the Region II



1 vice-president?

2 A. Well, basically the responsibilities of  
3 the position are essentially the same for all of the  
4 states. Obviously, each individual has their own  
5 style, and depending on the specifics of the  
6 situation, things will differ from state to state,  
7 but other than becoming familiar with the lobby laws  
8 and those types of things, you know, this is the  
9 nature of an activity that I've been involved in  
10 essentially all my professional career.

11 Q. Did Mr. Morris bring you in to Ohio or  
12 did you travel in to Ohio during this initial period  
13 to meet individuals with whom you would be working?

14 A. Yes.

15 Q. And were these individuals governmental  
16 officials or were they other -- were they people  
17 such as yourself, having jobs having to do with  
18 governmental relations?

19 A. They would be typically either paid  
20 lobbyists who are in contract to our members or they  
21 would be government affairs -- dedicated government  
22 affairs people who have been designated by the  
23 company, or they would be persons who were  
24 government affairs and lobby people from allied

1 parts of the industry, such as retailers,  
2 wholesalers, that type.

3 Q. Now, why has the Tobacco Institute  
4 divided into regions? What's the purpose for that?

5 A. Well, because there are 50 states. There  
6 are 50 state legislatures. I don't know how many  
7 local governments there are. It's simply a matter  
8 of breaking down the states into regions so that  
9 they can be covered by a single person.

10 Q. Is it fair to say that each state has its  
11 own particular character and nature?

12 A. Absolutely.

13 Q. And it's important for you to be able to  
14 focus on that particular state?

15 A. Absolutely.

16 Q. Do you know how long TI has used the  
17 regional concept in its activities?

18 A. No, I do not.

19 Q. Do you know if Ohio has always been in  
20 Region II with Michigan, Illinois and Indiana?

21 A. I do not.

22 Q. Does the regional vice-president have  
23 primary authority to direct TI's activities in the  
24 particular region that he or she serves?

1 A. How do you mean to direct?

2 Q. Do you have any chain of command to which  
3 you are obliged to report or to receive direction  
4 from?

5 A. Yes. I report to the senior  
6 vice-president for state activities, Pat Donoho.

7 Q. As the regional vice-president what  
8 authority do you have with respect to the  
9 administration of your activities, the running of  
10 the office, the budgeting, the strategy?

11 A. Within the procedures that have been  
12 established by the Tobacco Institute insofar as how  
13 the budgeting process has developed I do have the  
14 authority in Region II.

15 Q. And do you have the authority to hire or  
16 terminate employees or consultants or other persons  
17 who would be acting on behalf of TI in Region II?

18 A. The only person directly would be my  
19 secretary. The contract lobbyist, in this case Pete  
20 O'Grady in Ohio, the contract is between the Tobacco  
21 Institute. The contract is signed by Mr. Chilcote,  
22 who is the president of TI, and by Pete O'Grady. I  
23 do not have the -- I have a responsibility of  
24 directing Pete O'Grady insofar as day-to-day

1 direction, that type of thing. He has  
2 responsibility to me, but insofar as representing a  
3 -- the contract is going to be the controlling  
4 document insofar as that regard.

5 Q. From your answer you suggest that there  
6 is a written contract between TI and Mr. O'Grady?

7 A. There is.

8 Q. Are you aware of any other written  
9 contracts that TI has with any person or entity in  
10 the State of Ohio?

11 A. I'm not.

12 Q. Is it your belief that the only contracts  
13 that TI has ever entered into in the State of Ohio  
14 relate to the contract lobbyists that they retain?

15 MS. SHERMAN: Objection just as to time  
16 frame, but he can answer as far as you know.

17 A. The only way I can answer that with  
18 certain knowledge is during my period of time, and I  
19 know of no other contracts that TI has beyond the  
20 lobby contracts, certainly none that I'm involved  
21 in.

22 Q. Do you as regional vice-president in  
23 Region II have the authority to hire any consultants  
24 in the State of Ohio?

1 A. No, I do not.

2 Q. Have you ever hired any consultants in  
3 the State of Ohio?

4 A. Have I ever hired any? No, I have not.

5 Q. Do you know whether TI has ever hired any  
6 consultants in the State of Ohio?

7 A. I do not know that they have. I have no  
8 knowledge.

9 Q. How about public relations firms? Has TI  
10 ever hired any public relations firms to act on its  
11 behalf in the State of Ohio?

12 A. Nothing that I know of.

13 Q. Are there other individuals or entities  
14 with whom TI has an employee/employer or agency type  
15 of relationship with in the State of Ohio?

16 A. I'm not aware of any.

17 Q. Is part of your responsibilities as the  
18 regional vice-president to review and approve any  
19 official documents that TI is obliged to file with  
20 any entity in the State of Ohio?

21 A. Such as?

22 Q. Any applications to do business in the  
23 State of Ohio, any licenses, any formal  
24 registrations?

1 A. Of course, obviously, the lobbyist  
2 registration forms that I am required to file, which  
3 I do. That's the only thing that I have any  
4 knowledge of. I don't know anything else.

5 Q. I give you what's been marked as Exhibit  
6 3. Can you identify that document, Mr. Rizzo?

7 A. Yes. That's a representation of the  
8 regional divisions of state activities of the  
9 Tobacco Institute and the vice-presidents and their  
10 phone numbers.

11 Q. And is this a current -- is this  
12 particular representation current?

13 A. Yes, it is.

14 Q. All the Region II vice-presidents are  
15 still there as listed?

16 A. You mean all the regional  
17 vice-presidents?

18 Q. Yes, I'm sorry.

19 A. Yes, they are.

20 Q. And can you identify this document as  
21 having been created by the Tobacco Institute or  
22 someone at the Tobacco Institute?

23 A. Yes, it looks familiar.

24 Q. I note an asterisk, and it says local

1 battles. What does that designate, Mr. Rizzo?

2 A. I don't know. I notice it's in Ohio and  
3 Illinois. November of '96. My -- I really don't  
4 know specifically what they might be relating to in  
5 these regards because all of us have responsibility  
6 for monitoring activity and local government,  
7 depending if you call that local battles. I don't  
8 know what specifically they may be referring to in  
9 this map.

10 Q. Have you ever heard the term local battle  
11 state or used that term?

12 A. It's not that -- I really don't know how  
13 to answer that question. Have I heard it? Yes,  
14 I've heard it. I may perhaps have even used the  
15 term, but it's --

16 Q. You're not aware what the designation  
17 here is?

18 A. Whether it would have any specific  
19 meaning regarding, as I said, local battles.

20 Q. This is dated November of 1996. Do you  
21 have any recollection of any particular local battle  
22 in Ohio in November of '96?

23 A. Well, in Ohio, November of '96 probably  
24 -- well, I can't -- the only thing that comes to

1 mind would have had to have been involved with local  
2 smoking ordinances. I do recall that in -- that  
3 there were some active local smoking ordinance  
4 battles that did end up, ultimately end up in  
5 litigation or appeared that were headed for  
6 litigation. But as I said, the term is such a  
7 generic term that it's difficult to ascribe specific  
8 meaning to it in that sort of a context.

9 Q. When you are performing your duties, is  
10 it part of them that you track such things as the  
11 local battles as you've described, litigation, local  
12 government conflicts, lawsuits involving smoking  
13 issues?

14 A. Well, as I've indicated, one of the  
15 responsibilities is to monitor the development of  
16 issues at the local level that affect the industry  
17 and, you know, choice of terminology, whether you  
18 want to call them battles, whether you want to call  
19 them issues, whatever, you know, that I leave to  
20 others to describe how they want to call them. But,  
21 yes, one of the responsibilities that the regional  
22 vice-presidents share is of monitoring the  
23 development of these issues, reporting on them and  
24 attempting to assist in the identification of a



1 strategy that helps them to be resolved in a way  
2 that's not harmful to the industry.

3 Q. And these issues that you monitor and  
4 develop strategies on do not necessarily involve the  
5 Ohio General Assembly or Ohio state government at  
6 the time that you're involved with them in all  
7 cases?

8 A. No, they would not necessarily. They  
9 could be issues of a state nature involving either  
10 the legislature or one or more executive departments  
11 of government. They could be local, involving local  
12 administrative or local executive agencies. And  
13 it's a matter of identifying the existence of an  
14 issue that affects the industry and then, as I said,  
15 attempting to develop a strategy for its resolution  
16 in a way that doesn't negatively impact the  
17 industry.

18 Q. And isn't it true that that issue that  
19 you may focus on and identify could relate to not  
20 only local government or state government but could  
21 relate to commercial issues or law enforcement  
22 issues?

23 MR. HART: I object to the form. It's  
24 pretty broad. Go ahead.

1 A. Identify, I don't know what you're  
2 driving at.

3 Q. Well, you've indicated that you may focus  
4 your attention and try to monitor matters that arise  
5 at a local level or not involved with the Ohio  
6 General Assembly, for example. That's true?

7 A. That's right.

8 Q. And those issues could involve local  
9 zoning ordinances?

10 A. Yes.

11 Q. And could they also involve activities  
12 within a community that impact the tobacco industry?

13 A. Well, obviously, an activity that impacts  
14 the tobacco industry would be something that we  
15 would want to know about. Whether or not there was  
16 any involvement that came from that, you would have  
17 to -- you know, I don't know specifically where we  
18 go from there.

19 Q. But let me put it this way. It's  
20 possible that you would be involved and would  
21 monitor issues where the government was not involved  
22 at the time you began your scrutiny?

23 MS. SHERMAN: Objection as to the form.

24 A. Where the government was not involved?

1 That question has no meaning to me. I mean, I can't  
2 -- I'm not with you, counselor. I don't know where  
3 you're going so I don't know how to answer you.

4 Q. Well, I apologize. Let me try again.  
5 If, for example, there was an issue in a local  
6 community that had to do with banning smoking or  
7 discouraging smoking in certain venues, would that  
8 interest you?

9 A. Yes.

10 Q. If there were concern in a local  
11 community about young people smoking and about  
12 access of minors to tobacco products, would that be  
13 something that you would become involved in?

14 MS. SHERMAN: Objection as to the form.

15 A. Yeah, you've gone from interest to  
16 involvement.

17 Q. All right.

18 A. Interested in, yes. Involvement? It  
19 depends on what the situation is. That's why I say  
20 I'm not -- I don't really know how to answer that  
21 accurately and fairly.

22 Q. Well, let's talk about involvement. Are  
23 there occasions where you and the Tobacco Institute  
24 would become involved in a local issue in the State

1 of Ohio that would not arise out of any governmental  
2 activity?

3 MS. SHERMAN: Objection as to the form.

4 A. I know of none.

5 Q. Any initiatives that you've been involved  
6 in in the State of Ohio that attempt to develop  
7 public opinion with respect to the tobacco  
8 industry?

9 MS. SHERMAN: Objection as to form.

10 A. No.

11 MR. SAXBE: If I could get some  
12 clarification out of who is defending the  
13 deposition, is it going to be Mr. Hart or  
14 Ms. Sherman, or is it going to be both of you  
15 because I think you need to choose.

16 MS. SHERMAN: I don't think so. I think  
17 we have one attorney here who is representing the  
18 witness, and I represent the Tobacco Institute, and  
19 I'm perfectly capable of giving objections.

20 MR. HART: I would also suggest for the  
21 record that an objection as to one party on the  
22 Defendants is an objection as to all. So we're not  
23 going to be wasting time generating an unnecessary  
24 record.

1                   And while we have the floor, I notice  
2                   that Exhibit 3 was marked confidential tobacco  
3                   litigation, and it appears to have been produced  
4                   during the Oklahoma Attorney General case, and I  
5                   just would assume that we can have a stipulation  
6                   that whatever degree of confidentiality may or may  
7                   not have applied to the document when it was  
8                   produced will also apply to this deposition. I  
9                   don't think that's an important issue, but I do  
10                  state it for the record.

11                  I don't think there's anything  
12                  confidential about that document except for the fact  
13                  that it's marked confidential. Since I don't know  
14                  I'd just like to protect myself.

15                  MR. SAXBE: All right.

16                  (The record was read back as requested.)

17                  Q.           Mr. Rizzo, in your resume -- well, strike  
18                  that. We've talked about your authority and your  
19                  duties, and at the outset of this deposition a  
20                  statement was made indicating that your employer was  
21                  not conceding that you were the person most  
22                  knowledgeable about TI's activities in the State of  
23                  Ohio.

24                  Mr. Rizzo, who, if not you, to your

1 knowledge, is more knowledgeable about the Tobacco  
2 Institute's activities in the State of Ohio?

3 MS. SHERMAN: Objection. The record will  
4 make clear exactly what representation had been  
5 made.

6 MS. WATTERS: You can answer the  
7 question.

8 A. You're asking me to answer a question  
9 that I, you know -- if there are actions going on in  
10 the State of Ohio involving the Tobacco Institute  
11 that I am not involved in, how would I know who  
12 knows more about them than I do? You know, I mean,  
13 you're asking me a question -- it seems to me you're  
14 asking a question for which I have no way of  
15 answering.

16 Q. Is there any person at the Tobacco  
17 Institute or employed by the Tobacco Institute or  
18 who may have been a former employer of the Tobacco  
19 Institute who, to your knowledge, has been more  
20 involved and more active in Region II affairs in the  
21 State of Ohio in the last two years?

22 MS. SHERMAN: Objection.

23 A. I have no knowledge of any.

24 Q. With respect to that question is there

1 anyone, to your knowledge, who has more experience  
2 and has participated more actively in the Tobacco  
3 Institute's activities within the State of Ohio  
4 other than yourself?

5 MS. SHERMAN: Objection.

6 A. Again, I don't know exactly how to answer  
7 that question because, you know -- are there people  
8 that have more -- that have had more experience in  
9 the State of Ohio than I have? Obviously, the  
10 answer to that is yes. My experience is 20 months.  
11 But I don't know how to relate that question to  
12 anything that I can answer with any certainty.

13 Q. Within the last two years is the confines  
14 of my inquiry since May of '95.

15 A. I don't have knowledge of anything. I  
16 don't know of anything.

17 Q. You don't know of any person?

18 A. No, I do not.

19 Q. Your resume indicates that you manage a  
20 regional office, you plan and direct annual  
21 operating and program budgets exceeding \$500,000.  
22 Is that the budget which TI appropriates for Region  
23 II?

24 A. The \$500,000 figure is the figure of the

1 total -- it's the approximate total dollar value of  
2 figures expended in Region II by TI. Those are not  
3 -- for example, that includes the lobby contracts.  
4 That includes the budgets for political  
5 contributions in the states where those are legal.  
6 That's an aggregate number.

7 Q. In 1996 when you came on board what  
8 information and training did you receive with  
9 respect to budgeting for your region?

10 A. When I started, in fact, in July of '96,  
11 July normally begins the budgetary process, budgets  
12 are finally approved by the end of the year, but the  
13 budget process is initiated at that time and  
14 basically the process begins with the prior year's  
15 budgets and a review of how situations have changed  
16 in those states that may affect the industry in one  
17 way or another that may have a budgetary impact.

18 Q. Let's focus on when you came on board in  
19 July of '96. Did you participate in the preparation  
20 of the budget which was submitted in July of '96?

21 A. Yeah, the original draft had previously  
22 been prepared, and the initial workup of the budget  
23 was going on at the time that I started between the  
24 first part of July and about the end of August,



1 first of September.

2 Q. In your governmental experience prior to  
3 coming to TI had you had any opportunities to work  
4 on budgetary matters in the Governor's office of  
5 Indiana or on behalf of --

6 A. It was both in government and in the  
7 private sector.

8 Q. And you stated that part of the process  
9 is to review the past budget and develop your new  
10 budget. Can you say generally what amount was  
11 appropriated by TI for Region II activities in the  
12 year prior to your coming?

13 A. It has run, for all of Region II it has  
14 run generally in the range of 90 to \$100,000.

15 Q. And what was it that caused there to be a  
16 \$500,000 operating program budget in '96?

17 A. That figure is, as I said, an aggregate  
18 figure. When I talk about 90 and \$100,000, that is  
19 the Region II budget over which I have control. The  
20 approximate \$500,000 figure, that's the total cost  
21 of -- that's an approximation of the total cost of  
22 the operation of Region II which includes my salary,  
23 over which I have no control, the political  
24 contributions, the contracts with the lobbyists.

1 Sort of like in a state government budget. It's  
2 between entitlement and programs over which I have  
3 no control.

4 Q. But historically, to the best of your  
5 knowledge, TI has made -- has budgeted and made  
6 expenditures in the range of about a half million  
7 dollars a year in Region II?

8 A. In tobacco.

9 Q. In tobacco, right.

10 Q. And when you break -- or when TI breaks  
11 its budget down for Region II, how does it appear?  
12 Is it broken into segments having to do with -- go  
13 ahead.

14 A. Excuse me, go ahead. I'm sorry.

15 Q. Well, I think you understand what I'm  
16 asking is how is the budget itemized?

17 A. Part of the budget will appear as the --  
18 in the budget at the state activities division.  
19 That would include the salaries and the benefits of  
20 the regional vice-presidents and their secretaries,  
21 the taxes, insurance, all that stuff, everything  
22 else.

23 Q. That's one.

24 A. The lobbying expenses, the costs of the

1 contract lobbyists and the political -- no,  
2 political appears in the regional budgets. Okay,  
3 the lobbyists. And then on the regional, in the  
4 regional budgets what appears in my budget would be  
5 the support of state activities, such as support of  
6 ally organizations. It would include any costs that  
7 might be identified related to any particular -- if  
8 you had a local initiative or anything for which  
9 there had been a project approved or anything like  
10 that, there would be money set aside, those types of  
11 things. They won't always appear. It depends on  
12 what the situation is. But those are the nature of  
13 things that appear in that budget.

14 Q. Let's kind of break this down as far as  
15 the regional budget. The first was administration,  
16 your salary and your secretary's salary. You have  
17 one secretary?

18 A. That's right.

19 Q. And no other staff?

20 A. That's right, just the two of us.

21 Q. And approximately how much of the  
22 \$500,000 -- and I presume that it also involves rent  
23 for your office?

24 A. That's right.

1 Q. Telephone service?

2 A. That's right.

3 Q. Medical benefits?

4 A. That's right.

5 Q. Approximately how much of the \$500,000 is  
6 allocated for these administrative expenses?

7 A. I'm trying to transport back and forth  
8 between two places. Basically office operating --  
9 within the \$100,000 figure, that includes rent,  
10 phone, all that type of stuff plus copying, you  
11 know, maintaining the copier, all of that  
12 administrative stuff, plus the administrative  
13 support that we provide to other organizations or  
14 associations in Region II.

15 Q. Now, when you say administrative  
16 assistance to other organizations in Region II?

17 A. Administrative support.

18 Q. What's administrative support for other  
19 organizations?

20 A. These would be memberships, either they  
21 would be support of organizations, such as the Ohio  
22 Retail Association, Ohio Tobacco Dealers, things of  
23 that nature.

24 Q. And do you have a number in mind that is

1 allocated for this particular area under  
2 administration?

3 MR. HART: In Ohio?

4 Q. No, in Region II.

5 A. That is -- and for what year are we  
6 talking?

7 Q. Well, '95, '96, '97.

8 A. That is approximately \$55,000 in total  
9 throughout the region.

10 Q. If I might ask, what is your salary?

11 A. My salary is \$86,000. That appears -- as  
12 I said, my salary appears in the state activities  
13 division budget, which is part of the Washington  
14 budget. The \$500,000 figure that's in my -- that's  
15 in the resume is an approximation of the total  
16 amount of expenditures that TI makes in Region II,  
17 which would include my salary, lobbyists, all that  
18 stuff, everything else. But they don't all appear  
19 in my budget.

20 Q. Even when you prepare a budget you don't  
21 write in the entitlements as base figures in order  
22 to reach the \$500,000 figure?

23 MS. SHERMAN: Objection.

24 A. Yeah, I think we're talking about a

1 couple of different things. This is a line in a  
2 resume to try to give an approximation to somebody  
3 about what the total dollar value of expenditures on  
4 behalf of TI in the district, in the region, for  
5 which I have the responsibility, what the magnitude  
6 of that operation is. Then you're talking about  
7 specific budget items on a yearly basis, on a state  
8 basis, and so that's -- I mean, you're doing a  
9 little bit of apples and oranges here.

10 Q. Let me start over. First, historically  
11 at least in the window of time we're talking about,  
12 '95, '96, '97, TI expends in the range of \$500,000  
13 annually in Region II?

14 A. Yes, yes, within the budget, yes.

15 Q. Your budget which you prepare annually  
16 and submit to TI --

17 A. Is approximately \$100,000 over that  
18 \$500,000 budget.

19 Q. Of that \$100,000, \$55,000 is for  
20 memberships and --

21 A. Yes, in the four states.

22 Q. And other activities?

23 A. That's right.

24 Q. Where is the other \$45,000?

1 A. The other \$45,000 is in the -- the other  
2 \$45,000 is in operating expenses for my office.

3 Q. So now my focus will be on the \$400,000,  
4 roughly \$400,000 balance, which comes out of  
5 Washington and for which you have no budgetary  
6 responsibility?

7 A. No direct budgetary responsibility, no.  
8 That is basically the amount of the figure for the  
9 lobby budgets.

10 Q. Do you participate in the --

11 A. Negotiations?

12 Q. -- the development of that part of the  
13 budget?

14 A. I have not, simply because we have made  
15 no change in any of the lobbyists in the time that  
16 I've been here. In situations where there is a  
17 change of lobbyists the RVP would be involved in  
18 negotiations at that point.

19 Q. Your VP in Washington?

20 A. Yes.

21 Q. And that's Mr. Donoho?

22 A. No, no, the regional vice-president would  
23 be involved in the event that we were employing a  
24 new TI lobbyist in one of the states in Region II.

1 I would be involved in those discussions with regard  
2 to coming up with what the number for that person  
3 would be.

4 Q. Are you consulted at all about the Region  
5 II budget by TI officials in Washington with respect  
6 to how much they're going to appropriate for Region  
7 II?

8 A. It's a -- generally speaking, it's a  
9 grass roots up budget. I mean, you build up from  
10 the bottom. Then at some point the top starts  
11 saying, well, this is what the total dollars look  
12 like, what they're going to be coming down to TI  
13 from its members and how it needs to be broken up  
14 between the various divisions of the Tobacco  
15 Institute. And in that regard you need to look at  
16 basically something within this ball park. It's  
17 like any other budget-making process.

18 Q. What part of the budget process is state  
19 specific with respect to the State of Ohio? What  
20 portion of your \$100,000 do you allocate  
21 specifically for organizations that you intend to  
22 support in the State of Ohio?

23 A. In the State of Ohio that would be a  
24 total of approximately about \$20,000, a total of 20,



1       \$25,000.

2       Q.           And has that varied --

3       A.           Not significantly.

4       Q.           -- significantly?

5       A.           Not during my time, no.

6       Q.           What portion of the balance of the  
7       \$400,000 that Washington appropriates is  
8       specifically earmarked for the State of Ohio?

9       A.           In that regard -- well, recognizing that  
10      my salary and my secretary's salary appears in that  
11      portion of it, it's a difficult question to answer.  
12      You know, I think -- well, okay. Approximately a  
13      quarter, about \$100,000, I would think.

14      Q.           And when the budget is promulgated in  
15      Washington, does it specifically identify entities  
16      which will receive that \$100,000 in the State of  
17      Ohio?

18      A.           Yes.

19      Q.           And those entities --

20                   MS. SHERMAN: Objection.

21      Q.           Those entities are individuals, such as  
22      your contract lobbyists?

23      A.           No, now you're mixing things up. Now  
24      you're in the hundred thousand. He doesn't appear

1 in that group. He appears in the Washington side of  
2 that.

3 Q. Well, that's what I'm focused on. You've  
4 got the Washington side, which is \$400,000 for  
5 Region II, correct, roughly?

6 A. Roughly.

7 Q. And you've testified that approximately  
8 25 percent of that \$400,000 is specifically  
9 earmarked for activities in the State of Ohio,  
10 correct?

11 A. In general, yes.

12 Q. And my question is what portion of that  
13 \$100,000 coming out of Washington is allocated for  
14 your contract lobbyists in the State of Ohio.

15 A. So you're asking the question how much do  
16 we pay our contract lobbyists?

17 Q. Yes.

18 MS. SHERMAN: Much better question.

19 THE WITNESS: Thank you, counsel.

20 A. We pay our contract lobbyists \$55,000.

21 Q. Where does the other \$45,000 go?

22 A. As I said, part of that is going to be my  
23 salary. You know, a quarter of that -- my salary  
24 and my secretary's salary. You know, that would

1 take up another chunk of that \$100,000.

2 Q. What portion of that is earmarked for  
3 political contributions?

4 A. None in Ohio.

5 Q. None in Ohio?

6 A. No, we do not. It's illegal to make  
7 political contributions in the State of Ohio, and we  
8 do not have that.

9 Q. Does it go for any purposes associated  
10 with programming that TI sponsors in the State of  
11 Ohio?

12 MR. HART: Objection.

13 MS. SHERMAN: Objection.

14 A. It goes for what I told you.

15 Q. So the only expenditures --

16 A. Salaries and contract.

17 Q. The only expenditures of TI money that  
18 affects the State of Ohio --

19 A. Through the state activities division.

20 MS. SHERMAN: Let him finish his  
21 question.

22 Q. Let me ask this again. The only funds  
23 which you have identified which is allocated  
24 specifically of the \$500,000 in Region II that TI

1       expends that is specifically directed toward Ohio  
2       activities are funds used to support member  
3       organizations or supportive organizations, I think  
4       you've called them, such as the retail merchants,  
5       things like that.

6       A.           Allied organizations.

7       Q.           Allied organizations. And your contract  
8       lobbyists?

9       A.           That's right.

10      Q.           And that there are no other portions of  
11      the budget of the Tobacco Institute that you're  
12      aware of that support or fund any activities in the  
13      State of Ohio by TI or any other entity.

14                   MS. SHERMAN: Objection.

15      A.           The warranty that I am making is that  
16      insofar as state activities, the state activities  
17      function of the Tobacco Institute, that  
18      approximately the total dollar that's spent through  
19      state activities in Region II is approximately  
20      \$500,000, of which approximately \$100,000 of that,  
21      and this is just very ball park, back of the  
22      envelope type, would be expenditures that are  
23      budgeted for specific activities in the division in  
24      the State of Ohio, contract lobbyists and the

1 supportive ally organizations.

2 Q. To your knowledge are there any funds  
3 expended by the Tobacco Institute in the State of  
4 Ohio other than through the state activities  
5 division?

6 A. Direct knowledge, no. I'm not aware of  
7 -- I know, for example, litigation, that type of  
8 stuff, there would be other dollars spent, but I do  
9 not know of any other activities by other divisions  
10 of the Tobacco Institute that may be spent in the  
11 State of Ohio.

12 Q. Of the checks issued by the Tobacco  
13 Institute for activities within the State of Ohio,  
14 supportive organizations, allied organizations,  
15 contract lobbyists, do you sign those checks?

16 A. I do not.

17 Q. Do you sign any checks on behalf of the  
18 Tobacco Institute?

19 A. Expense checks, you know, travel  
20 expenses, those types of things. And that's  
21 basically -- it would be basically expense checks.

22 Q. And you sign those? You sign those  
23 expense checks?

24 A. Yes, because usually I pay them and I'm

1 reimbursed.

2 Q. Reimbursed by whom?

3 A. Tobacco Institute.

4 Q. I don't understand. You incur  
5 expenditures. You incur expenses on behalf of the  
6 Tobacco Institute.

7 A. Travel.

8 Q. Pay them out of your pocket?

9 A. That's right.

10 Q. And then you write yourself a check?

11 A. I do not write myself a check. They  
12 write me a check.

13 Q. Do you ever write checks?

14 A. Checks, no. I do not write checks on the  
15 Tobacco Institute. For example, the bills for the  
16 operation of the office, things of that nature, I  
17 will either, depending on if they're a monthly  
18 operating thing like the rent and all that stuff, I  
19 just approve them and send them off. They're paid  
20 out of Washington. The smaller types of things,  
21 electric bills, all that type of stuff, I will pay  
22 personally and then will be reimbursed.

23 Q. And do you --

24 A. That's what I mean.

1 Q. And you submit requests for reimbursement  
2 documents?

3 A. That's right.

4 Q. Those go to Washington?

5 A. Yeah, bimonthly.

6 Q. Does the Tobacco Institute maintain any  
7 checking accounts in Indiana?

8 A. They do not.

9 Q. How about in the State of Ohio?

10 A. They do not.

11 Q. What portion of the \$55,000 that is  
12 earmarked for allied organizations is directed  
13 towards supporting or funding lobbying activities in  
14 the State of Ohio?

15 MR. HART: Objection.

16 A. The support, the funds that are provided  
17 to organizations are provided without contract or  
18 without agreement as to -- they are support dollars  
19 to those organizations for them to use in any  
20 operation of their operation. They are not payment  
21 for services or contracts or whatever. They are  
22 support funds.

23 Q. When you -- do you travel in to the State  
24 of Ohio and incur expenses on behalf of the Tobacco

1 Institute?

2 A. Periodically, yes.

3 Q. And when you do this in all occasions do  
4 you personally pay for any expenses you incur and  
5 then seek reimbursement?

6 A. I do.

7 Q. Are there any occasions where you come in  
8 to the State of Ohio to conduct your particular  
9 activities and they are paid for by any other  
10 entities?

11 MS. SHERMAN: Objection.

12 A. No. I'm not aware of any.

13 Q. Philip Morris wouldn't pick up the check  
14 for an activity you were involved in, an expense you  
15 personally incurred or incurred on behalf of TI?

16 MS. SHERMAN: Objection.

17 A. You mean beyond a dinner or anything of  
18 that nature?

19 Q. Let's say do you ever come in and you  
20 spend the night in Columbus, Ohio?

21 A. If you get a bit more specific, counsel,  
22 I could be a bit more helpful.

23 Q. Do you ever come in to Columbus, Ohio,  
24 and stay overnight?



1 A. Yes, I do.

2 Q. How often do you do that?

3 MR. HART: You want to limit that to the  
4 period in the complaint?

5 Q. Let's say it's 1996 when you began. How  
6 many times in 1996 did you come in to the State of  
7 Ohio and --

8 A. In 1996?

9 Q. On behalf of the Tobacco Institute.

10 A. I would say probably four or five.

11 Q. And on any of those occasions did you  
12 incur any expenses?

13 A. Generally I don't think I -- I can't  
14 recall that I did, that I may have stayed  
15 overnight. Generally I'll do it down and back,  
16 depending on the time of the year. But if I did an  
17 overnight, it was at my own expense.

18 Q. And any instances where someone would buy  
19 your dinner or pick up the check and you would  
20 reimburse them?

21 A. No, no.

22 Q. You indicated, I think, that you're not  
23 aware that the Tobacco Institute has hired any  
24 public relations firms in the State of Ohio?

1 A. I'm unaware of any.

2 Q. And to your knowledge the Tobacco  
3 Institute's retention of counsel in the State of  
4 Ohio has related solely to this --

5 A. Lobbying?

6 Q. To lobbying?

7 A. Yeah, lobby counsel, Pete O'Grady.

8 Q. And, in addition to Mr. O'Grady, to your  
9 knowledge, TI has retained Covington & Burling and  
10 Hahn Loeser, in part, for litigation  
11 representation?

12 A. Yeah. That's not part of my budget,  
13 obviously.

14 Q. And that representation has been in cases  
15 where TI has been a party to litigation?

16 A. If there is litigation where TI may be  
17 involved, that is handled, not handled through state  
18 activities. As I say, I do know that there are  
19 situations where TI is involved in litigation, but I  
20 have nothing to do -- I have nothing to say about  
21 those decisions, and I have no knowledge of how  
22 those decisions are made or how those expenses are  
23 shared.

24 Q. Do you have any knowledge of TI's sharing

1 or assuming expenses for lawyers in the State of  
2 Ohio in litigation in which TI is not a party?

3 A. I have no knowledge.

4 Q. In the operation of Region II do you  
5 submit any annual plans or strategies to TI with  
6 your annual budget request?

7 A. I don't know how you want to describe it,  
8 whether you would call it a plan or what, but  
9 basically the budget is based upon an assessment of  
10 what you see the coming year's activities likely to  
11 be. And so, obviously, there's a relationship  
12 between budget and what you suspect you might be  
13 dealing with in the next year. But I wouldn't --  
14 because I've been involved in strategic planning and  
15 that type of thing, and I would not call it that  
16 type of a document. It's not to that degree.

17 Q. With your written assessment or  
18 evaluation how is that developed?

19 A. The process of developing the budget and  
20 trying to determine the activities of the  
21 association over the next year, that's the process  
22 that begins in July. It involves sitting down with  
23 the company representatives of our member companies,  
24 Region II people that I had enumerated earlier sit

1 determine what you believe to be the likelihood of  
2 exposure that you're going to have on this issue.

3 Q. Are they limited to issues involving  
4 state government?

5 A. The state government and local  
6 government.

7 Q. Did they have to do with litigation or  
8 issues that could --

9 A. No.

10 Q. -- be potential litigation?

11 A. No, we don't -- there is no separate item  
12 in my budget for Region II that deals with  
13 litigation. The whole litigation budget is not a  
14 responsibility of state activities.

15 Q. Is the evaluation specifically connected  
16 to the budget or is it a separate document?

17 A. Evaluation of what?

18 Q. This written evaluation that you've  
19 described.

20 A. Well, as I said earlier, I wouldn't raise  
21 the level of refinement to a strategic plan or  
22 something of that nature. I would describe it more  
23 as an identification of the nature of issues that we  
24 believe that we're likely to confront and whether or

1 not we, you know, attempting to peer into the  
2 crystal ball, believe that it's going to involve  
3 resources, the expenditure of resources that we  
4 currently don't have available to us and, if so,  
5 what we think they might be.

6 Q. And it's your testimony that those issues  
7 solely relate to local and state government matters?

8 A. That's right.

9 Q. No litigation?

10 A. No litigation. I have nothing to do with  
11 litigation decisions.

12 Q. No commercial trends?

13 A. Absolutely not.

14 Q. Is there a document or is there any  
15 communications between you and any division of TI  
16 that does address matters that do not affect state  
17 or local government?

18 A. Not that I'm aware of.

19 Q. So you never get any communications from  
20 Washington with respect to litigation that may be  
21 related to the tobacco industry?

22 A. Oh, yes. Obviously, there's a flow of  
23 information insofar as what's going on, either at  
24 the state level or the local level involving

1 governmental activity. We are a lobby  
2 organization. We be lobbying.

3 And, you know what, an infection in one  
4 area of the body can infect other areas of the body  
5 very quickly. So from this perspective there is an  
6 interchange of information about what's going on in  
7 other states, other local governments, what may be  
8 going on at the federal level that may have an  
9 impact on state activities, governmental activities  
10 or whatever and, in fact, a summary of what's going  
11 on legally and insofar as public affairs are  
12 concerned. These are all bits and pieces of  
13 information, all of which ultimately will have an  
14 effect on what actions are proposed within state and  
15 local government that may involve the company.

16 Q. Do you get any medical or scientific  
17 evidence from any source which you utilize in your  
18 activities within the State of Ohio?

19 A. There are from time to time within the  
20 documents that are circulated among state government  
21 affairs people reports that are from the public  
22 domain, medical reports and that type of thing, that  
23 are distributed. For example, if there is a report  
24 that was released by the FDA or by any other

1 governmental agency that dealt with the industry,  
2 that report would be circulated.

3 If there are reports that are generated  
4 from within state government or local government  
5 about activities that affect the industry, then  
6 state activities get those reports and put them in  
7 the pipeline for distribution throughout the  
8 industry, for communication purposes.

9 Q. You circulate that type of material  
10 often?

11 A. I circulate --

12 MR. HART: Excuse me. I didn't hear the  
13 whole question.

14 Q. The question was you circulate that  
15 information often?

16 MR. HART: He's asking about frequency.

17 A. To the extent that there is activity  
18 within my states that generates information that  
19 affects the industry that comes from state  
20 government, local government, that affects the  
21 industry, I distribute it, yes. And in a like  
22 fashion things that are -- that occur in other  
23 states that ultimately may have a bearing on what  
24 happens in Ohio or whatever, that information goes

1 in the same pipeline.

2 Q. With respect to scientific and medical  
3 information that you obtain from whatever source, do  
4 you circulate that as well in the pipeline in the  
5 State of Ohio?

6 MS. SHERMAN: Objection.

7 A. The type of information that I would  
8 obtain, for example, a SAMSHA report, or a document,  
9 you're familiar with SAMSHA?

10 Q. Go ahead, describe it.

11 A. You're not familiar. You learn about it,  
12 SAMSHA report, the Syonar amendment. That's the  
13 report on use of tobacco by age group that state  
14 governments are charged with the responsibility of  
15 preparing.

16 Q. And who prepares that?

17 A. It will differ from state to state as to  
18 what agencies, whether it's the state board of  
19 health. It could be -- it depends on who the  
20 Governor assigns it to or who the legislature  
21 assigns it to. One of the things is find out who  
22 assigns it, get that report. That's the type of  
23 document that may relate to health things that I  
24 would secure and distribute.



1 Q. Do you secure and distribute in the State  
2 of Ohio any newspaper articles or similar type of  
3 media accounts having to do with the tobacco  
4 industry?

5 A. Yes.

6 Q. And in all cases is that information  
7 related to some governmental activity that's being  
8 reported on?

9 A. Yes.

10 Q. And when you distribute this information,  
11 to whom do you distribute it?

12 A. It depends on what the information is.  
13 If it's information that is state specific, like the  
14 State of Ohio, if it's -- it would be information I  
15 would distribute to my company representatives, if  
16 they hadn't picked it up through their lobbyists, to  
17 make certain they had the information. If it was  
18 information that I had reason to believe might have  
19 implications insofar as what might be going on in  
20 Ohio might have some implications for other states,  
21 I would distribute it to Washington for them to  
22 distribute to my counterparts. Again, it depends  
23 upon the information and what the most optimal use  
24 of that information would be by whom.

1 Q. Do you distribute any of that information  
2 to governmental officials in the State of Ohio?

3 A. I cannot recall having done that. I  
4 can't think of anything offhand where I have done a  
5 direct distribution to governmental officials.

6 Q. Do you retain copies of all of your  
7 distributions of information to persons or entities  
8 within the State of Ohio?

9 A. Within the bounds of responsible records  
10 management. Now, if -- let me give an example.  
11 Let's talk about a specific Ohio situation.  
12 Cigarette tax in Ohio, there's a question of what  
13 the economic effect of a cigarette tax in Ohio would  
14 be upon the state insofar as its collections and  
15 what effect that it might have on retailers or  
16 whatever.

17 That information, if there was such an  
18 issue in the State of Ohio and there was a need for  
19 that type of information, I would request it from  
20 our economics department. They would prepare the  
21 information. I then would distribute it. As I say,  
22 I cannot recall that I personally have put it in the  
23 hands of or sent it by letter to specific  
24 governmental officials. Did it go to specific

1 governmental officials? I certainly hope so.

2 That's why it was prepared.

3 But, you know, I am not attempting to be  
4 cute in my answers at all, but I'm trying to -- and  
5 it gets back to what I had said earlier in terms of  
6 if you define lobbying as face to face, you're Rocky  
7 Saxbe, member of government, elected, appointed,  
8 whatever, and I'm Ray Rizzo, Region II  
9 vice-president of the Tobacco Institute, it's very  
10 unlikely that you would know who I am. But if you  
11 were involved in an activity that affected the  
12 industry, I would hope that information affecting  
13 the industry would come to you through actions that  
14 I've taken.

15 Q. Do you have a regular circulation list of  
16 individuals to whom you send this information in the  
17 State of Ohio?

18 A. Yes.

19 Q. And how many people on that list?

20 A. It will vary. For example, there are  
21 sort of two ways to -- two basic groups. There is  
22 the industry group, which would be communications to  
23 the local lobbyist of the member companies, our TI  
24 lobbyist, and to the company representatives.

1 That's the industry group. Then there's what  
2 loosely gets termed the Tobacco Team. The Tobacco  
3 Team is a generic description of ally organizations  
4 that may be involved, may have an interest or  
5 concern in this same issue. That group may differ  
6 from issue to issue, depending on what the issue is  
7 as to whether they may or may not be involved.  
8 Their position on the issue may be different than  
9 the industry's position, because of their members,  
10 but they would be a part of the Tobacco Team.

11 Q. So your circulation universe is not  
12 limited to contract lobbyists?

13 A. No.

14 Q. What portion of your administrative  
15 budget is allocated for postage to circulate  
16 communications from you within the State of Ohio?

17 A. I would have no way of being able to  
18 identify that simply because -- well, I have a  
19 postage budget.

20 Q. What's your postage budget?

21 A. God, let me think. I really can't  
22 recall. That would be a part of the overall \$96,000  
23 and that would be for Region II, not just for Ohio.  
24 Then, of course, what would be done by fax would not

1 -- you know, would appear as a part of the  
2 telephone budget, you know. So it seems to me to be  
3 a difficult, if not useless, question to answer.

4 Q. How much information is circulated  
5 directly to the State of Ohio from Tobacco Institute  
6 entities other than the state government division?

7 A. I don't know, and I don't know that I  
8 know how to react to that question.

9 Q. Do you know whether or not the Tobacco  
10 Institute communicates with the State of Ohio other  
11 than through you?

12 A. I do not know.

13 MR. HART: Counsel, are you at a  
14 convenient breaking point?

15 MR. SAXBE: Yes. I'm sorry, Mr. Rizzo,  
16 we can take a break any time.

17 THE WITNESS: That would be appropriate.

18 (Recess taken from 3:02 to 3:14.)

19 Q. Mr. Rizzo, when you were employed by the  
20 Tobacco Institute, did you sign an employment  
21 agreement?

22 A. No.

23 Q. Have you signed an employment agreement  
24 with the Tobacco Institute since you came on board?

1 A. I think -- let me think back. When I  
2 accepted the terms of employment, I know that I sent  
3 a letter back and told them that I accepted the  
4 terms of employment, which was, you know, the  
5 description of all the key stuff, all that other  
6 stuff. But if you are speaking to the point of is  
7 there an employment contract, no, there is not.

8 Q. But you recall signing something saying  
9 that you accepted the terms of your employment?

10 A. Yes.

11 Q. Countersigned a letter that they sent you  
12 and sent it back, is that what happened?

13 A. Yeah, as I recall.

14 Q. Do you recall whether you've signed a  
15 confidentiality agreement?

16 A. I believe so. I'm trying to recall. I  
17 think there was. Yes, I believe so.

18 Q. Is every employee of the Tobacco  
19 Institute required to sign a confidentiality  
20 agreement?

21 A. My understanding is that that is a normal  
22 procedure.

23 Q. Your secretary in your office signed one  
24 as well?

1 A. She was employed before I. I would  
2 imagine that she did. I don't know what the  
3 procedure was at the time that she was employed.

4 Q. Do your contract lobbyists sign  
5 confidentiality agreements?

6 A. The only thing that I know is that they  
7 annually -- they sign a contract annually. And, as  
8 I recall, I think there are contained -- there is  
9 contained within that document provisions that  
10 relate to the nature of information. But if there's  
11 anything beyond that, I'm unaware of it.

12 Q. Does anyone else who associates with the  
13 Tobacco Institute or is connected with the Tobacco  
14 Institute in Region II required to sign a  
15 confidentiality agreement other than yourself, your  
16 staff and Mr. O'Grady?

17 A. Nothing from anything that I do and  
18 nothing that I'm aware of. I'm unaware of anything  
19 of that nature.

20 Q. How about any of the allied groups that  
21 you identified, individuals at the Ohio Council of  
22 Retail Merchants or Ohio Grocers Association?

23 A. No, there is no agreement. There is no  
24 nothing.

1 Q. Aside from your contacts with Mr. Donoho  
2 with whom do you communicate with at TI in their  
3 Washington office?

4 A. Well, it depends on the issue. If it has  
5 -- if it's a question of an economic nature, Bill  
6 Orzachowski, who is our staff economist. For  
7 example, tax questions or anything like that or if  
8 it's anything that requires an econometric analysis  
9 or something of that nature, he would be the person  
10 I would talk to. If it was a matter that related to  
11 any administrative activity of the office, I would  
12 speak to whoever in TI in Washington had that  
13 responsibility, whether it was payroll  
14 responsibility, a matter of policy maybe Bill Adams,  
15 who has the administrative responsibility. If I  
16 have a question relative to any public statements or  
17 anything, I might call Tom Luria, who is the  
18 director of public affairs for TI that's pretty much  
19 it.

20 Q. Do you ever have any contact or  
21 communications with the president of the Tobacco  
22 Institute?

23 A. Sam Chilcote?

24 Q. Yes.



1       A.           Mr. Chilcote will periodically meet with  
2       us collectively as a state activities division and  
3       speak with us. We, in addition to that, we have an  
4       annual state activities 3-day retreat where we bring  
5       the TI lobbyists, contract lobbyists and all of the  
6       regional people in to discuss upcoming, you know,  
7       what's going on, that type of stuff. And Sam hosts  
8       those events and will speak to us, as is  
9       appropriate, nothing more or less than I have  
10      experienced in other similar national trade  
11      associations as being the role of the chief  
12      executive officer.

13     Q.           Is Mr. Chilcote ever in the State of Ohio  
14     for any purposes, to your knowledge?

15     A.           Not that I'm aware of.

16     Q.           Has he ever visited the State of Ohio  
17     since you became employed by the Tobacco Institute?

18     A.           Not that I have any knowledge of.

19     Q.           Do you know if he's directed any  
20     communications to the State of Ohio since you became  
21     a regional vice-president?

22     A.           No. I have not received anything that  
23     was -- I have not received anything that would have  
24     showed me as someone to get a copy of it. Whether

1 or not he's written to anyone in Ohio, I have no  
2 knowledge.

3 Q. When Mr. Chilcote hosts these events  
4 where the contract lobbyists come in, do Ohio  
5 contract lobbyists attend that?

6 A. It would be Pete O'Grady.

7 Q. And anyone else from Ohio who would be  
8 invited to that?

9 A. No.

10 Q. Anyone else from Ohio who attended any of  
11 those events that you know of?

12 A. I think there was one night of the three  
13 when company reps were invited in on an evening  
14 activity, but that's all. It's basically a state --  
15 it's state activities, workshop.

16 Q. When you speak of the company reps, and  
17 you identified those persons, are they specifically  
18 assigned to work with you in Region II on common  
19 issues?

20 A. General affairs, that's right.

21 Q. And do you collaborate with these  
22 individuals on your activities within the State of  
23 Ohio?

24 A. Yes. As I said, when we have industry

1 meetings, they would be involved or -- and those  
2 meetings may be either physical meetings, they may  
3 be telephone conference calls. And in that event it  
4 could be either meetings of myself and the company  
5 representatives or meetings of myself, the company  
6 representatives and their lobbyist, depending on  
7 what the matter is we're discussing.

8 Q. Do you have a regularly scheduled meeting  
9 with the company reps?

10 A. No, but as I say, in general -- I call it  
11 running the bases. In general I'm in contact with  
12 the company reps at least once a day or they're in  
13 contact with me. Either there's some question that  
14 they have or something that they want to talk with  
15 me or something that I want to talk with them,  
16 simply because in four states that are as diverse  
17 and as involved as these four are, there's always  
18 something going on somewhere.

19 Q. Are any of these company representatives  
20 registered lobbyists in any of the states that they  
21 serve?

22 A. I do not have direct knowledge. I guess  
23 probably the best way to answer that is I don't  
24 know.

1 Q. Do you know whether any of the company  
2 representatives with whom you communicate once a day  
3 are registered lobbyists in the State of Ohio?

4 A. I thought that was what you just asked  
5 me.

6 Q. I asked if they were registered  
7 lobbyists.

8 A. Excuse me. I must listen closer. As I  
9 say, I do not know. I suspect they are, but that is  
10 only a suspicion. In my view I would not -- again,  
11 that gets down to a question of the definition of  
12 lobbyist according to the State of Ohio, and they  
13 would have to determine, you know, whether they fit  
14 into it. My suspicion is that they do. But I don't  
15 know. I don't get a copy of their filings. I don't  
16 know anything about their activities from that  
17 regard.

18 Q. You indicated that from time to time you  
19 speak with Tom Luria, and he's the director or  
20 vice-president for public affairs?

21 A. That's right.

22 Q. What is the public affairs division?

23 A. Well, basically they're the spokesman for  
24 TI. I do not have a responsibility of speaking to

1 the media. Any statement relative to the tobacco --  
2 to activities of the Tobacco Institute come from Tom  
3 Luria.

4 Q. And does he, to your knowledge, has he  
5 ever directed any of his activities toward the State  
6 of Ohio?

7 A. I can think of one specific instance that  
8 I know of for certain that had to do with -- it was  
9 a year -- it seems like yesterday in one respect,  
10 and it seems like a thousand years ago. You may  
11 remember the situation better than I because, as I  
12 recall, it was going on around here.

13 It was the Montgomery County Board of  
14 Health that was anticipating going with a tobacco  
15 ban, and there was -- and, in fact, at one point  
16 there was discussion of the possibility of a public  
17 hearing that would involve Stanton Glance and  
18 representatives of the tobacco companies to talk  
19 about secondhand smoke or something like that. I  
20 forget the specifics of the situation, but it had to  
21 do with local smoking ordinances and the possibility  
22 that something was going on in Ohio that may  
23 ultimately be involved that did not ultimately  
24 occur.

1                   And in that regard I know that he spoke  
2 with special emphasis on what was going on in Ohio.  
3 Other instances are there times that he's spoken of  
4 events in Ohio or whatever? I have no immediate  
5 knowledge of that.

6                   Q.           How about anyone else associated with the  
7 Tobacco Institute? Have they directed any  
8 statements, comments, literature to the public?

9                   A.           I am unaware of any.

10                  Q.           In the State of Ohio?

11                  A.           We do not generate literature for public  
12 distribution. We're a trade association, and so we  
13 don't -- basically what we generate is for the use  
14 of the other -- of the specific activities of TI.  
15 So I'm not aware of anything.

16                  Q.           Does the public affairs division work  
17 with any of the associate organizations in the State  
18 of Ohio?

19                  A.           Not to my knowledge. If so, that would  
20 be on a specific basis that was initiated in the  
21 state by that organization, if there was any  
22 information or if there was -- if they were looking  
23 for some specific thing that they thought that our  
24 public affairs people might have, they would call

1       them directly.

2       Q.               Are you aware --

3       A.               Generally, they would call me and I would  
4       say, well, call Tom Luria, and if we've got anything  
5       like that, he would be able to get it for you.

6       Q.               Has that ever occurred?

7       A.               I'm trying to think of specific  
8       situations, and to be as fair as I can I have to  
9       tell you that it must have, but I can't recall a  
10      specific. There's nothing that rises. But the  
11      nature of those types of conversations would be  
12      someone that was asking, you know, perhaps some of  
13      the retailers, that might be asking about something  
14      that they had seen or heard about through perhaps  
15      their own channels and knew that it had to do with  
16      tobacco and wanted to know if we had a copy of that  
17      document or a copy of that release or whatever  
18      because just as my responsibility is tracking what  
19      goes on in the state and local government in Region  
20      II, their responsibility is tracking what people  
21      have to say about the industry. So they are a  
22      repository of information in the public domain.

23                      And so they would call and say, you know,  
24      hey, I'm looking for such and such, so and so. And

1 I say I don't -- sometimes they will distribute  
2 reports if they think that it's something that will  
3 be of common interest to everybody. Other times it  
4 will be a response type thing. You know, the nature  
5 of that conversation would be that they would call  
6 me and say, do you have a copy of or this was  
7 mentioned, what do you know about that. And if it's  
8 something that I have, I will distribute it to  
9 them. If it's something that I don't have, I will  
10 put them in touch with Tom Luria.

11 Q. But you don't recall any specific  
12 occasion when that occurred?

13 A. No. There's nothing -- and, again, it  
14 has happened but there isn't anything that comes to  
15 mind that's of such a specific nature, unusual  
16 nature or significant nature that rises to the level  
17 of being monumental than any of the more than -- you  
18 know, the calls that I get every day. It's  
19 communication.

20 Q. How does the state and local government  
21 division differ from the division of public  
22 affairs?

23 A. Well, we lobby; they talk. We listen;  
24 they listen. We communicate; they communicate. But



1 basically we lobby; they talk.

2 Q. Do they circulate documents or written  
3 information into the State of Ohio?

4 A. Into the State of Ohio?

5 Q. Yes.

6 A. Distributions that they do other than the  
7 specific types of things that are referred to  
8 earlier when people said, hey, you know, that they  
9 make are through the public information channels.  
10 They don't make -- because they are not in -- and,  
11 here again, I guess you can say what is lobbying and  
12 what is public affairs. You know, that's like  
13 saying how big is a bread box. But their job is not  
14 communicating -- their job is to be the official  
15 spokesman of the industry, of the association,  
16 okay. Their job is not to spin or propagandize or  
17 to develop pieces for distribution or anything like  
18 that. It's what you and I may have called in our  
19 earlier days press secretaries.

20 Q. Their job is directed toward the public  
21 at large?

22 A. That's right.

23 Q. And the media. Your job is directed  
24 toward governmental affairs?

1 A. That's right.

2 Q. As you've defined it?

3 A. Yeah, state and local government  
4 activities.

5 Q. Is there a budgetary allocation in TI's  
6 budget for the division of public affairs'  
7 activities relating to Ohio?

8 A. They exist. Therefore, they have a  
9 budget.

10 Q. And is it Ohio specific?

11 A. I have not seen that budget. I do not  
12 know. The only budget I see deals with state  
13 activities, my budget and the activities of the  
14 division. I do not have -- do not see the budgets  
15 of any other divisions.

16 Q. Would the -- would TI's division of  
17 public affairs' expenditures directed toward  
18 communications to the State of Ohio be contained in  
19 the half million dollars a year allocated toward  
20 Division II?

21 MR. HART: Objection, lack of  
22 foundation.

23 A. Yeah, I think we're talking by each  
24 other. They have a budget for what they do. I have

1 a budget for what I do. What they do comes out of  
2 their budget. I don't know what it is. I don't  
3 know how it's set up. I don't know what it looks  
4 like. I don't know how many zeroes there are in  
5 it. I don't know how many people there are in it,  
6 how many projects there are in it. Anything else  
7 you can think of, I don't know anything about it.

8 So any of the numbers that we may have  
9 been discussing earlier have no bearing on what they  
10 do, but in that regard, as I said, their  
11 responsibility is immediate responsibility. It is  
12 not a governmental affairs responsibility. And the  
13 Tobacco Institute does not routinely produce or  
14 doesn't, to my -- does not produce what you and I  
15 would consider to be public information pamphlets.  
16 They prepare reports, statistical information, that  
17 type of thing, relative to the industry that you  
18 would expect from any national association of a  
19 manufacturing industry. And that's about it.

20 Q. And are any of those reports specifically  
21 related to the State of Ohio?

22 A. No.

23 Q. Nothing that the Tobacco Institute  
24 prepares or promulgates is specific to the State of

1 Ohio?

2 A. Nothing in my experience that I know of.  
3 At one time, because I know that you're asking about  
4 files, and as I was going through and seeing what  
5 were in files, at one time the Tobacco Institute  
6 used to prepare annually a report that was made  
7 available to the public which was a sort of  
8 cross-section of tobacco economic information that  
9 was state specific, you know, a pocket piece, you  
10 know, how many jobs, how much, what the tobacco  
11 industry involvement in that state was.

12 That has not been done in my time, and it  
13 was -- the publication of that document ceased  
14 before I began with TI in 1996. And that used to be  
15 as people -- you know, people would write in. You  
16 remember when you were a kid in the second grade,  
17 and you had a requirement to write something up  
18 about an industry or something, and you wrote to  
19 associations or whatever and you got back all this  
20 -- or you wrote to countries and you got  
21 brochures. It was a public brochure that was state  
22 specific.

23 Q. When you talk about reviewing files, when  
24 were you doing this review?

1       A.           Boy, I do have to be careful, don't I?  
2       When I was reviewing files, that was when I came  
3       with TI to just look and see what was -- to get an  
4       idea as to what types of things were in the files  
5       and who -- what was there, what types of things were  
6       there, the type of thing that anyone when you came  
7       into a new office, just to see what's in the file  
8       cabinet.

9       Q.           And you recall seeing state specific  
10      material that you don't believe is prepared any  
11      longer but material that was specifically related to  
12      the State of Ohio that had been prepared by the  
13      Tobacco Institute?

14     A.           That had been prepared not just  
15      specifically for the State of Ohio but that had been  
16      prepared specifically for all states and that there  
17      was the same information for the other three states  
18      in Region II. That was information that, as I said,  
19      is no longer prepared.

20     Q.           Do you have any interaction, any  
21      communications with the Tobacco Institute's  
22      Executive Committee?

23     A.           No, I do not.

24     Q.           Do you know who constitutes the Executive

1 Committee of the Tobacco Institute?

2 MR. HART: Counsel, I wonder if you could  
3 make a representation about how that relates to  
4 Ohio's specific jurisdiction.

5 MR. SAXBE: I'm not sure.

6 A. And I can't help you because I don't  
7 know.

8 Q. You don't know. Have you ever heard of  
9 the Committee of Counsel?

10 A. I have heard of the Counsel of  
11 Committee.

12 Q. What is the Committee of Counsel?

13 A. Committee of Counsel is a committee that  
14 is made up of the counsels of the member  
15 corporations and of TI's retained counsel, and it is  
16 -- when we mentioned litigation, when that subject  
17 came up, the extent to which I can talk about  
18 litigation with any degree of specificity at all is  
19 that if something comes up, such as billboard  
20 legislation that we consider to be potentially  
21 unconstitutional, you know, that our attorneys  
22 believe is potentially unconstitutional, we get  
23 together copies of the information, do the usual  
24 groundwork of gathering information together so that

1 it can be presented by one of the company's  
2 Committee of Counsel to the Committee of Counsel for  
3 them to discuss.

4 Q. Do you have any dealings with the  
5 Committee of Counsel?

6 A. I have none.

7 Q. Have you ever had any dealings with the  
8 Committee of Counsel?

9 A. I have not had any.

10 Q. Do you know who Walter Woodson is?

11 A. Yes, I do.

12 Q. Who is Walter Woodson?

13 A. Walter Woodson is the -- he's the  
14 director of -- he's with TI in Washington, and he  
15 has primary relations responsibilities with the  
16 growers, the manufacturing community, that type of  
17 thing.

18 Q. Does he do any lobbying?

19 A. I do not know that he does. I have never  
20 known him to be involved in lobbying activities.

21 Q. Has he ever been in the State of Ohio, to  
22 your knowledge?

23 A. Not to my knowledge.

24 Q. Do you know whether President Chilcote

1 engages in any lobbying activities in the State of  
2 Ohio?

3 A. I do not.

4 Q. What about Walker Merriman?

5 A. Walker Merriman, in public affairs, I do  
6 not.

7 Q. Does he lobby in the State of Ohio?

8 A. Not that I am aware of.

9 Q. Brennan Dawson, does she?

10 A. She is no longer with TI.

11 Q. Who is Brennan Dawson?

12 A. Brennan Dawson was the director of public  
13 affairs, communications. She had the job that Tom  
14 Luria has. She is now -- but her -- she now is with  
15 Brown & Williamson Corporation in their federal -- I  
16 think she does their corporate communications on  
17 federal issues.

18 Q. How about William Adams? What's his  
19 position?

20 A. Bill Adams? He's vice-president for  
21 administration with the Tobacco Institute. He has  
22 responsibility for the operational side of the  
23 business, taxes, payroll, contracts for telephones,  
24 computers, all that stuff.



1 Q. Does he -- has he ever come in to the  
2 State of Ohio, to your knowledge?

3 A. Not to my knowledge.

4 Q. Is he engaged in any lobbying activity?

5 A. Not to my knowledge.

6 Q. How often are you personally in the State  
7 of Ohio on an annual basis?

8 MR. HART: Again, restricted to the  
9 two-year period before the complaint?

10 MR. SAXBE: Sure.

11 A. So we're talking about when again, from  
12 when to when? July 1, '96 to --

13 MS. SHERMAN: May 8, 1995 --

14 MR. HART: He's talking about his period  
15 of employment. So July 1, 1996, through May 8,  
16 1997.

17 MR. SCHWEPE: To the present, isn't it?

18 MS. SHERMAN: No, it's not to the  
19 present. It's to the filing of the complaint.

20 A. I can't give a specific number without  
21 going back and checking my travel calendar, but it  
22 would be in the nature of -- May of --

23 MS. SHERMAN: No, it's when you began.

24 MR. HART: To May of '97?

1 A. May of '97. That's the out date. So  
2 you're talking about basically a year.

3 MS. SHERMAN: Right.

4 A. It would be, I would say, close to six or  
5 eight times, certainly less than ten.

6 Q. And you indicated you run the bases on a  
7 daily basis with your company reps, one of whom  
8 resides in Ohio?

9 A. That's right.

10 Q. Do you communicate with persons in the  
11 State of Ohio on a daily basis?

12 A. It would be fair to say that sometime  
13 during the average day I will speak to someone in  
14 Ohio about something.

15 Q. And do you communicate in writing with  
16 people in the State of Ohio?

17 A. Yes.

18 Q. And how often do you do that?

19 A. As often as necessary. It's difficult to  
20 put a number on it, probably a couple times a week  
21 maybe something goes out. And, again, there will be  
22 a number of things that I will distribute to all the  
23 company reps in Region II. In other words, this is  
24 -- and it may be information about Ohio, it may be

1 information to people in Ohio about something that's  
2 going on in Illinois or something that's going on in  
3 Minnesota or whatever. But if you're looking for  
4 the rubric writing to somebody that lives in Ohio, a  
5 couple times a week.

6 Q. And when you distribute information to  
7 the company reps that pertains to Ohio, is it your  
8 expectation that they will circulate to others in  
9 the State of Ohio?

10 A. It depends on the nature of the  
11 information.

12 Q. Some of the time do you have that  
13 expectation?

14 A. Some of the time.

15 Q. Are you copied on correspondence from any  
16 persons at the Tobacco Institute with other persons  
17 in the State of Ohio?

18 A. From TI to Ohio, copied? Um, um, um, um,  
19 um, um, I'm just trying to think. Oh, I'm sorry. I  
20 didn't mean to cause you problems. I have to  
21 believe that it happened sometime but nothing rises  
22 to a level. And I could describe the nature of what  
23 it would be. If it was something that I requested  
24 of one of the other departments and they

1       communicated directly back to that person, they  
2       would carbon me. Otherwise, it would come through  
3       me to them. Whether there are situations where  
4       people at TI Washington or other offices wrote to  
5       people in Ohio without contacting me, you know, what  
6       human being would say no because you don't know. I  
7       don't know.

8       Q.               Do you participate in any press  
9       conferences?

10      A.               I do not.

11      Q.               In the State of Ohio?

12      A.               Or anywhere else.

13      Q.               Are you aware of any press conferences  
14      where TI was a participant in the State of Ohio?

15      A.               A participant in what capacity?

16      Q.               They were there. They were in  
17      attendance.

18      A.               My suspicion would be in that regard  
19      anything that might have been done with regard to  
20      the We Card program since the Tobacco Institute is a  
21      participant, a member of the We Card program, any  
22      documents that would have -- press releases that  
23      would have circulated with that regard that would  
24      include who was involved in We Card would include

1 the Tobacco Institute, but that is not something  
2 that -- that's something that the Tobacco Institute  
3 has an association, is a participant in. But it's  
4 not our show, per se.

5 Q. Do you know who would have represented  
6 the Tobacco Institute at any such event or  
7 occasion?

8 MS. SHERMAN: Objection.

9 A. In the -- the We Card program is a  
10 contract program. There's an organization of  
11 members that were set up of national associations of  
12 which the Tobacco Institute is one, that were set up  
13 to fund and support the We Card program. Obviously,  
14 from within that organization there is a group that  
15 functions as the policymaking body for hiring. They  
16 hire a contractor who does the work. They design --  
17 they approve the design of the material, the  
18 information, all that stuff, everything else.  
19 Insofar -- from my contact with regard to We Card in  
20 Region II it's Walt Klene Associates from Washington  
21 or Washington area, maybe the Virginia side of  
22 Washington. They are the contract group that  
23 prepares the documents and so on.

24 Q. And they're contracted by this

1 organization that TI is an associate of?

2 A. That's right. That's right.

3 Q. What is TI's involvement in policymaking  
4 for this We Card program?

5 A. I have no -- I don't know.

6 Q. Do you know what TI's financial  
7 commitment or --

8 A. I do not.

9 Q. Do you have any knowledge as to what TI's  
10 financial experience with the We Card program is?

11 A. No.

12 Q. Is that a program which is supervised by  
13 you out of Region II?

14 A. My involvement with the We Card program  
15 is to facilitate meetings with people, primarily  
16 retailers who are interested in youth tobacco  
17 control programs to facilitate the establishment, or  
18 meeting with the We Card people, meet with them, we  
19 come in, here's the materials, here are the types of  
20 training programs we have, here are the resources we  
21 can bring to the table, here's what we can do. And  
22 by and large, these state organizations are the  
23 state counterparts of the national organizations  
24 that are part of the whole We Card effort, together

1 with the Tobacco Institute.

2 Q. In the State of Ohio what participation  
3 have you personally had or your office personally  
4 had in the We Card program?

5 A. Shortly -- and this does date back to  
6 shortly after my employment with TI in July of '96  
7 because this was the point at which We Card was  
8 getting off the ground, was the facilitation of a  
9 meeting basically inviting the Tobacco Team, the  
10 retail community, the grocers, the C store  
11 operators, that whole group, and having the We Card  
12 team come in to make their presentation and then  
13 beyond establishing the meeting and being the  
14 facilitator for that, that was the extent of my  
15 involvement and the extent of the involvement of  
16 TI.

17 Q. Did the public affairs division in  
18 Washington play a role in the We Card program?

19 A. I have no direct knowledge of any role  
20 they may have played. My suspicion is that they  
21 would have but, you know, I have no direct  
22 knowledge.

23 Q. Do you have any knowledge as to any  
24 speakers or individuals associated with Tobacco

1 Institute had in Ohio with the We Card program?

2 A. Any speakers that would have come to the  
3 We Card program would have been arranged through the  
4 administrative procedure for the operation of that  
5 program. So I don't know who they were or, you  
6 know, how that was done, but it would have been done  
7 through that fashion.

8 Q. It was not directed by you?

9 A. No.

10 Q. With respect to any local government  
11 initiatives, petition drives, things like that, have  
12 you had any involvement in the State of Ohio?

13 A. None.

14 Q. Has the Tobacco Institute historically  
15 had any involvement in such petition drives?

16 MS. SHERMAN: Historically beyond the  
17 time period?

18 A. I have no direct knowledge of or no  
19 knowledge of the extent to which there may have been  
20 involvement by the Tobacco Institute in initiative  
21 programs in the past. I have not been involved in  
22 any during my tenure.

23 Q. Do you know whether or not Ann Browder  
24 has had any contacts with the State of Ohio on



1       behalf of the Tobacco Institute?

2       A.           I have no idea who Ann Browder is.

3       Q.           Do you know who Michelle Boise is?

4       A.           No, I do not.

5       Q.           How about Dan Wabe?

6       A.           Dan Wabe?

7       Q.           Wabe.

8       A.           I know the name Wabe because at one point  
9       he worked for TI but, no, I don't know if he's --

10      Q.           Do you know whether Mr. Bob Pruett still  
11      has any contacts with the State of Ohio on behalf of  
12      the Tobacco Institute?

13      A.           Not at all. If he has any role on behalf  
14      of the Tobacco Institute, that is totally unknown to  
15      me.

16      Q.           Do you know who Bill Trisler is?

17      A.           The late Bill Trisler, yes. He had this  
18      position. He was the regional vice-president of the  
19      Tobacco Institute and I'm a bit shaky on when he  
20      started. He is a political generation or two behind  
21      me. He came out of the Indiana AFL-CIO about the  
22      time I was leaving Indiana state government in  
23      1979. So I did not know Bill Trisler directly from  
24      my contacts in the Governor's office, but I know

1       that he was the regional vice-president for TI prior  
2       to Bob Pruett, and there may have been someone in  
3       between the two. I don't know. But Bill Trisler  
4       died a number of years ago before I started with  
5       TI.

6       Q.               Is your secretary's name Meg Byrne?

7       A.               It is.

8       Q.               Does she ever have occasion to come in to  
9       the State of Ohio?

10      A.               Not -- no, she has not come to the State  
11      of Ohio in my tenure with TI. Her involvement with  
12      the State of Ohio would be in calling local units of  
13      government relative to getting information relative  
14      to ordinances, things of that nature.

15      Q.               Is she engaged in any lobbying activity?

16      A.               No, she's not.

17      Q.               Do any citizens of the State of Ohio come  
18      to your office in Indiana to discuss or do business  
19      on matters relating to the State of Ohio?

20      A.               Very rare occasions. I want to say maybe  
21      in the less than two years that I've been with TI I  
22      would say once, maybe twice, and that would be Derek  
23      Crawford with PM, Scott Fisher with PM and Phil  
24      Craig, who is a lobbyist for the restaurant and

1 licensed beverage association people.

2 Q. Are any of those gentlemen lobbyists for  
3 the Tobacco Institute?

4 A. They are not. In the instance of the  
5 meeting they were sort of visiting firemen's  
6 meetings in that they were in Indianapolis for other  
7 activities and came by the office to talk. In  
8 general, my office is -- I've got an 1100 square  
9 foot office for two people. It's not a public  
10 office.

11 Q. Has the Division II office always been in  
12 Indianapolis?

13 A. I don't know how long Division II has  
14 been Division II as it is now, and I don't know --  
15 we haven't always had offices. And the office has  
16 been where it is now since, I want to say, 1972,  
17 somewhere around in there, within five or six  
18 years.

19 Q. I'd like to just clarify what I believe  
20 we've already talked about, and that is that Tobacco  
21 Institute is structured with a state and local  
22 government division, of which you're Division II  
23 vice-president. There is also a public affairs  
24 division?

- 1 A. (Witness indicates affirmatively.)
- 2 Q. Administrative division?
- 3 A. Yes.
- 4 Q. Federal government relations division?
- 5 A. That's right.
- 6 Q. Are there any other divisions?
- 7 A. Economics. That's pretty much it.
- 8 Q. Is the Tobacco Institute licensed to do
- 9 business in the state of Indiana?
- 10 A. I don't know. I don't know whether you
- 11 need a license to do business. Do you, Attorney? I
- 12 don't know. Would you advise me to get a license to
- 13 do business? I have no clue. You got to get a
- 14 license to do anything through the state anymore,
- 15 you got to have a license.
- 16 Q. How about in the State of Ohio?
- 17 A. I am unaware. I have never signed one.
- 18 Are we against the law?
- 19 Q. Well, I guess that's what this is all
- 20 about, isn't it?
- 21 MS. SHERMAN: I don't think so.
- 22 A. As I said, we be lobbying. I don't
- 23 believe we do because I have never seen it.
- 24 Q. We discussed earlier, Mr. Rizzo, that in

1 Division II each state has issues that are specific  
2 to that state.

3 A. Uh-huh.

4 Q. What issues that you deal with and that  
5 the Tobacco Institute deals with are specific to the  
6 State of Ohio?

7 MS. SHERMAN: During the time frame?

8 MR. SAXBE: Sure.

9 A. Well, almost exclusively since I started  
10 with -- certainly within six months after I started  
11 with TI, the business of Ohio State government has  
12 been the resolution of the educational funding  
13 situation. That's been the primary business  
14 activity of the Ohio Legislature. And in terms of  
15 being the overriding issues that involves the  
16 legislature, that has clearly been the issue that  
17 the legislature, rightfully so, has been dealing  
18 with.

19 That has implications for our industry  
20 from the taxing, from the taxation perspective. And  
21 so the potential of an increase in the State of  
22 Ohio's state cigarette excise tax has been the  
23 primary focus of legislative activity that the  
24 industry has been involved in since I started with

1 TI in July of '96.

2 If you think about when I started in July  
3 of '96, there were elections, of course, that  
4 following November. The legislature was in its  
5 final days. So legislation of other natures that  
6 would have involved tobacco or in the latter  
7 legislative stages shortly after the start in 1997,  
8 I think it was March the 24th, when the state  
9 Supreme Court handed down the school funding  
10 decision, that activity just, as I said, rightfully  
11 so, occupied the primary focus of the Ohio  
12 Legislature, dealing with this constitutional and  
13 fundamental policy of funding public education.

14 Other issues, other social issues, you  
15 know, pretty much got shouldered aside as the  
16 legislature dealt with this issue. Coupled with  
17 that is the fact that as an industry we -- our  
18 primary posture is defensive rather than offensive,  
19 meaning that as an industry and as an association  
20 representing that industry, we are not in a posture  
21 of proposing significant pieces of state  
22 legislation. The time certainly isn't right for  
23 opinions of the tobacco industry as to what ought to  
24 be done at state and local government.

1 Q. Is it your testimony that the Tobacco  
2 Institute actively advocates on issues relating to  
3 taxation governmental regulation and other matters?

4 A. What do you mean by actively advocates?

5 Q. Communicates with elected officials?

6 A. You're not using the term lobby.

7 Q. Let's use the term --

8 A. Actively --

9 Q. I believe in the State of Ohio lobbying  
10 is defined as actively advocating.

11 A. Oh, okay. Well, then let's call it  
12 lobbying. It's -- also, I've never understood,  
13 maybe you can explain this to me, why I am a tobacco  
14 lobbyist and others are anti-tobacco activists.  
15 They're not lobbyists.

16 At any rate, actively advocating, you  
17 know, as I said before, if there is a piece of  
18 legislation that is filed in the Ohio Legislature or  
19 a piece of ordinance or public policy that is  
20 presented in local government that affects the  
21 interests of the industry, the responsibility of my  
22 operation is to monitor it, to learn about it, get a  
23 copy of it, find out what the -- where this  
24 particular proposed change in public policy is in

1 its process to become either promulgated or to  
2 become effective as an ordinance or promulgated as a  
3 regulation or policy for a particular body or  
4 enacted as a law and then to convene the lobby  
5 personnel of the association and the companies to  
6 determine what the best way is to represent the  
7 interests of the industry to those people and then  
8 to do it.

9 Q. The lobby personnel are Mr. O'Grady and  
10 Mr. Viero, is that correct?

11 A. For TI, yes.

12 Q. So any communications that TI has with  
13 governmental officials is exclusively through  
14 Mr. Viero and Mr. O'Grady; is that correct?

15 A. Well, I don't know what you might be  
16 making reference to and where you're going with  
17 that.

18 Q. Well, let me rephrase my inquiry. Do you  
19 communicate, does the Tobacco Institute communicate  
20 with governmental officials in the State of Ohio  
21 other than through Mr. O'Grady and Mr. Viero?

22 A. No.

23 Q. And on what matters, so that we  
24 understand what is your lobbying activity --



1 MS. SHERMAN: Objection to that  
2 representation.

3 Q. -- what matters have they communicated  
4 with governmental officials on in the State of  
5 Ohio?

6 MS. SHERMAN: Objection.

7 MR. HART: And, counsel, I would point  
8 out at this point you are expressly asking about  
9 lobbying activities which I thought was beyond what  
10 the court ordered.

11 MR. SAXBE: I think what the court --

12 MR. HART: I also would say just for you  
13 to think about that the witness has repeatedly now  
14 said any and all issues affecting the tobacco  
15 industry on which there is a consensus that allows  
16 the Tobacco Institute to represent the industry as a  
17 whole.

18 A. And this is where -- you know, someone  
19 standing up and saying I'm Joe blow and I represent  
20 TI? That's Pete O'Grady.. Are there other people  
21 who represent other parts of the industry or persons  
22 who may have an interest that is the same as the  
23 Tobacco Institute, will they from time to time use  
24 information that was developed by TI? Yes, they

1 will. Are they testifying for TI or on behalf of  
2 TI? No, they are not. They are testifying for  
3 whoever or representing whoever they represent,  
4 whether it's PM, whoever it may be. But in the  
5 strict structure of the question that you asked, is  
6 there anyone else that represents TI in the State of  
7 Ohio? No.

8 MR. SAXBE: Let's note the time and take  
9 five minutes.

10 (Recess taken from 4:18 to 4:29.)

11 Q. Mr. Rizzo, does the Tobacco Institute  
12 presently have any employees or offices or any  
13 interests in use or possess any property in the  
14 State of Ohio?

15 A. Not that I'm aware of.

16 Q. Do you share any office space with anyone  
17 in the State of Ohio?

18 A. No.

19 Q. Pay any rent anywhere?

20 A. No.

21 Q. Utilize any telephones that you have to  
22 reimburse people for?

23 A. No.

24 Q. Incur any kind of administrative expenses

1 for any activities in the State of Ohio?

2 A. No.

3 Q. Are you billed for any activities by any  
4 entity that pays expenses?

5 A. Periodically, for example, if we are  
6 going to host, participate in a hosting, like a  
7 dinner event, for example, for Ohio legislators at  
8 ALEC or for government officials at a regional,  
9 whether it's NGA or Midwest legislators, NGC, NCSL,  
10 any of those, there may be from time to time a  
11 situation where one of the company people will just  
12 to have single bookkeeping and all of that stuff  
13 will organize the event, plan the event, pay for the  
14 event and then bill everyone out and then provide  
15 the information for reporting. Other than that,  
16 no.

17 Q. Do you rent any cars in the State of  
18 Ohio?

19 A. No.

20 Q. Do you make any financial commitments  
21 relating to the rental of meeting room space,  
22 convention space?

23 A. Periodically, only for an industry  
24 meeting, it may be at the Hyatt or at The Athletic

1 Club or whatever.

2 Q. With respect to the Hyatt, how often do  
3 you meet there?

4 MS. SHERMAN: During the time period?

5 Q. Since you've become an employee of the  
6 Tobacco Institute.

7 MS. SHERMAN: Still during the time  
8 period?

9 MR. SAXBE: Yes.

10 A. Maybe three times, relatively few. There  
11 are times that we will meet at The Athletic Club,  
12 and we may meet at -- I'm trying to think where else  
13 we have met. Doubletree. And, again, those are  
14 situations where we will rent a meeting room for a  
15 meeting. Usually the meetings are less than a  
16 couple hours.

17 Q. Who attends these meetings?

18 A. It will be either the company people or  
19 the Tobacco Team, the company people and the allies,  
20 depending on the nature of the meeting. It may be  
21 part of the day may be company people only and may  
22 be joined by the Tobacco Team later on. It depends  
23 on the nature of the meeting, the agenda.

24 Q. Is it common then that you would have a

1 Tobacco Team meet and then you would have a TI  
2 meeting separately?

3 MS. SHERMAN: You're just asking just  
4 during the relevant time period, right?

5 MR. SAXBE: Yes.

6 MS. SHERMAN: Just in the one year.

7 A. I'm trying to think. I think probably at  
8 that time we all met from beginning to end. I can't  
9 recall a specific situation where we may have  
10 separated the groups out, but that may have  
11 happened. It may have happened maybe once. And, as  
12 I said, basically the purpose of the meeting of the  
13 company people was to determine the extent to which  
14 we had a common position, what our position was  
15 before we sat down with the larger group so that we  
16 were at least all speaking with one voice.

17 Q. Would these be meetings with the company  
18 people that you would call?

19 A. Yes.

20 Q. And would you pay the bill personally and  
21 then be reimbursed when you got back to Indiana?

22 A. Yeah, generally that was the way it would  
23 occur.

24 Q. Were any of these meetings paid for with

1 a check from the Tobacco Institute?

2 A. No, usually they were my credit card.

3 Q. Is there a Tobacco Institute credit card?

4 A. No, there is not.

5 Q. Do you have a credit card which you  
6 dedicate to Tobacco Institute expenses?

7 A. No. Well, I use my personal American  
8 Express card.

9 Q. Do you use the American Express card for  
10 any personal expenses?

11 A. Yes.

12 Q. Are these expenses included in your  
13 regional budget?

14 A. I have a travel budget, yes.

15 Q. And are they included in the Ohio  
16 specific portion of that budget?

17 A. No. It's just a total travel budget.

18 Q. Do you retain the receipts for these  
19 expenses?

20 A. Absolutely, if I want to get reimbursed,  
21 I do.

22 Q. And you retain these at your Tobacco  
23 Institute office in Indianapolis?

24 A. Yeah, there's a copy at my office in

1 Indianapolis and, of course, there will be a copy in  
2 Washington.

3 Q. At The Athletic Club of Columbus who  
4 makes the reservations for those meeting rooms?

5 A. I think it may be the chief, it may be  
6 Brooke Cheney. It could be a couple of people.

7 Q. Are you a member of The Athletic Club of  
8 Columbus?

9 A. I am not.

10 Q. Are you a member of a reciprocal club, if  
11 you know?

12 A. I do not. I may be. I am a member of  
13 the Skyline Club in Indianapolis. I know that's a  
14 reciprocal of the Capitol club, but I don't know  
15 about The Athletic Club.

16 Q. Are the reservations at the Hyatt made by  
17 you?

18 A. Made by my secretary.

19 Q. In your name?

20 A. They are.

21 Q. Do you reserve them in the name of  
22 Mr. Ray Rizzo or do you do it in the name of the  
23 Tobacco Institute?

24 A. They're in my name.

1 Q. Do you maintain any telephone listings or  
2 telephone numbers in the State of Ohio?

3 A. Yes.

4 Q. And what is that?

5 A. It's a phone list. I mean, what is  
6 that?

7 Q. Oh, you maintain a list of numbers in the  
8 State of Ohio that you call?

9 A. Yeah, people I call. I've got their  
10 number. They live in Ohio. I dial up the phone and  
11 they live in Ohio.

12 Q. Is that an Ohio specific list?

13 A. If they're in Ohio, it is.

14 Q. I mean, do you have a list of Ohio  
15 contacts?

16 A. No, it's not an Ohio specific list.

17 Q. My original question --

18 A. It's a people specific list.

19 Q. My original question was does the Tobacco  
20 Institute?

21 A. No.

22 Q. Have any numbers in the State of Ohio?

23 A. I don't know about the Tobacco  
24 Institute. That's a pretty large group that's



1 bigger than I am, but no. I am not aware of any.

2 Q. Are there any 800 numbers for the Tobacco  
3 Institute?

4 A. There is one. That's mine.

5 Q. And is that published in anything?

6 A. It is not, although it got-- somehow or  
7 other about three weeks ago I started getting weird  
8 phone calls. And somehow or other if someone were  
9 to call 1-800-555-1212 and then ask for the Tobacco  
10 Institute, they would come up with my number in  
11 Greenwood, Indiana, and we would get these goofy  
12 phone calls in the middle of the night from drunks  
13 in California and weirdos in wherever. But, no, the  
14 800 numbers, as a policy, the 800 numbers for the  
15 Tobacco Institute in all of its locations are  
16 nonpublished. They are available for the people  
17 that we do business with.

18 Q. With your Ohio numbers, your Ohio  
19 contacts, when you determine that you're going to  
20 circulate information into the State of Ohio, how do  
21 you do it in order to get it to all your Ohio  
22 contacts?

23 MS. SHERMAN: Objection.

24 MR. HART: Lack of foundation.

1 Q. I believe you said you had a list of Ohio  
2 contacts.

3 A. Yeah, a list of people who live in Ohio,  
4 yeah.

5 Q. And you refer to them as your Ohio  
6 contacts?

7 A. Yes. And they will either be on a gang  
8 fax or, you know, we'll send them out by snail  
9 mail.

10 Q. That's the U.S. Postal Service?

11 A. Always has been.

12 Q. We're on Exhibit No. 4. Mr. Rizzo, can  
13 you identify what's marked as Exhibit 4?

14 A. Can I recognize this? From Ray Rizzo.  
15 4-25-97. No, I can't identify this.

16 Q. You've never seen that document before?

17 A. I don't recognize it.

18 Q. Do you recognize the handwriting on it?

19 A. No. It's not my handwriting. That I  
20 know. 4-25-97, a year ago. You know, I don't  
21 recognize it. I don't know whether that may be my  
22 secretary's writing, but I don't know.

23 Q. Okay. You don't recognize it. Is this  
24 the manner in which you would gang fax documents in

1 to the State of Ohio?

2 A. Traditionally I'll put a cover with  
3 them. If something, and it may well -- you know,  
4 this may have -- the only explanation I might have  
5 for this, it may have been something that came in  
6 while I was out of the office and that it's  
7 something that was instant in the media and that my  
8 secretary may have just faxed that out just to put  
9 it in their hands because it was, you know,  
10 immediate but I don't -- as I said, under normal  
11 circumstances I will put a cover with it rather than  
12 just a slip on it and fax it out. But I have put  
13 slips on things and faxed them out.

14 Q. Do you know who Lance Morgan is?

15 A. No, I don't.

16 Q. How about Jennifer Swint?

17 A. No, I don't. Obviously, those are  
18 Washington numbers. I don't know who Bozell, Sawyer  
19 & Miller, I don't know whether that's a PR firm or  
20 law firm.

21 Q. Up in the left-hand corner it has all  
22 Region II contacts for the Tobacco Institute,  
23 also --

24 A. And Ron somebody.

1 Q. Can you read that?

2 A. No, that was the one -- I don't know. It  
3 looks like a Webster or something. I don't know.  
4 That's the thing that throws me. This may be my  
5 secretary's handwriting.

6 Q. Okay. You don't recognize it.

7 A. I don't recognize it, per se.

8 Q. How many people on your Region II list of  
9 contacts?

10 A. Well, the largest number would be if I  
11 were contacting, that would be all of the company  
12 reps, all of their lobbyists, the TI reps, the  
13 Tobacco Team in the region. So if you were looking  
14 at everybody in Region II, you would be talking  
15 about well over a hundred persons.

16 Q. How many people of that would be in Ohio?

17 A. In Ohio? Well, 18, 15, 18, 20, somewhere  
18 around in there.

19 Q. About 25 percent?

20 A. Yeah, about that, a little less maybe.

21 Q. Who is your principal contact in the  
22 State of Ohio?

23 A. For what?

24 Q. For anything?

1 A. That depends on what anything is.

2 Q. I see.

3 A. My principal contact in the State of Ohio  
4 would be Pete O'Grady, I mean, in terms of my guy,  
5 it would be Pete O'Grady. But my principal contact  
6 in the State of Ohio would be who I needed to talk  
7 to in the State of Ohio at that one time.

8 Q. But you don't rely on Pete O'Grady to  
9 communicate to people within the State of Ohio, do  
10 you? For example, Mr. Mahaney, you would call John  
11 Mahaney directly?

12 A. I would call John Mahaney, that's right.

13 Q. You would call Brooke Cheney directly?

14 A. I would. In general, my policy is that I  
15 will not contact the contract lobbyist of my company  
16 members without first contacting the company  
17 member. And that's just a matter of courtesy. If  
18 I'm going to call Brooke Cheney, I will first call  
19 Hurst Marshall and say, Hurst, I'm going to call  
20 Brooke, and here's what I'm going to ask, what I'm  
21 going to talk about because Brooke is his lobbyist,  
22 not mine, and it's a matter of courtesy.

23 Q. That's RJR?

24 A. R. J. Reynolds.

1 MR. KAIRIS: That's R. J. Reynolds  
2 Tobacco Company?

3 MR. SAXBE: R. J. Reynolds Tobacco  
4 Company, yes.

5 A. Yes, as opposed to the cookie bakers.

6 Q. Do you contact any persons other than  
7 Mr. O'Grady to make any arrangements for or on  
8 behalf of the Tobacco Institute and its activities?

9 A. From time to time.

10 Q. What kind of duties or what kind of  
11 requests do you make of these persons contacted?

12 A. Sometimes it will be, you know, set up a  
13 meeting, whatever. And, you know, that depends on  
14 who -- you know, what the situation is, what the  
15 time is, who's around.

16 Q. Do you give any of these Ohio contacts  
17 any directives with respect to legislative  
18 communications or governmental communications they  
19 should make on behalf of the Tobacco Institute?

20 A. Not directives on behalf of the Tobacco  
21 Institute. They are part of the industry. You  
22 know, what we are doing is what they are doing. In  
23 terms of lobby positions, I mean, there's -- I can't  
24 think of a situation where the Tobacco Institute is

1 lobbying one way and the tobacco companies are  
2 lobbying another. That's why they hired me.

3 Q. So you will --

4 A. But I do not -- under no circumstances do  
5 -- in any conversations that I have with them am I  
6 representing that they are representing the Tobacco  
7 Institute.

8 Q. And you have no expectation that they  
9 will represent themselves as acting on behalf of the  
10 Tobacco Institute?

11 A. You know, my assumption is that when  
12 Brooke Cheney speaks with a member of the  
13 legislature or member of the administration, he is  
14 speaking as the lobbyist for R. J. Reynolds Tobacco  
15 Company. And as I have said before, in that  
16 conversation he may be conveying information that  
17 was developed by the Tobacco Institute, by the  
18 economics division or whatever, may have even been  
19 some things that may have been developed perhaps by,  
20 you know, by sources that are contracted by other  
21 tobacco companies that have been provided through  
22 the Tobacco Institute. But the representation that  
23 I anticipate that he is making to government  
24 officials is that he is representing RJR Tobacco.

1 Q. Is it accurate to say that  
2 representations made to government officials by the  
3 Tobacco Institute are exclusively through its  
4 contract lobbyists?

5 MS. SHERMAN: Objection.

6 A. It seems to me we just went there not too  
7 long ago.

8 MS. SHERMAN: We did.

9 A. I don't know where we're going with  
10 this. I don't know why I didn't answer it the first  
11 time.

12 Q. Go ahead. You can answer it a second  
13 time.

14 A. I just wondered what about my first  
15 answer didn't meet the test you have that causes you  
16 to ask the same thing again.

17 MR. SAXBE: Read the question back,  
18 please, to Mr. Rizzo.

19 MS. WATTERS: I would note that the  
20 witness is conferring with counsel while a question  
21 is pending.

22 MR. HART: There's no question pending.  
23 There is no question pending. There was a request  
24 to read the question that's pending.



1 MS. WATTERS: The question is still  
2 pending, though.

3 MR. HART: There is no question.

4 THE WITNESS: What's the question?

5 MR. HART: There isn't any. He wants a  
6 prior question read.

7 MR. SAXBE: If we could hold up so she  
8 could read the question back.

9 (The record was read back as requested.)

10 Q. I'm sorry if you've answered that  
11 before. I didn't get it. So if you could please  
12 respond to that particular question.

13 A. I answered it before. Read it there. I  
14 won't answer it again.

15 Q. You're refusing to answer the question?

16 A. Counselor, give me a question I can  
17 answer.

18 Q. I just did. Are you refusing to answer  
19 the question?

20 A. I'm not refusing to answer the question.  
21 I've already answered it.

22 Q. Are you going to answer that question or  
23 not?

24 MR. HART: Let's go off the record. I

1 think he feels he just did.

2 MR. SAXBE: No, let's not go off the  
3 record.

4 MR. HART: He is saying something in  
5 response to your question, which is an answer. His  
6 answer is to incorporate by reference an earlier  
7 answer. I think this is a waste of transcript  
8 paper. Let's go off the record and discuss what may  
9 simply be a miscommunication among all of us.

10 THE WITNESS: Counselor, you have come  
11 back to this question at least three different times  
12 from a couple or three different directions. I want  
13 to know what it is that I thought I had answered  
14 your question fully earlier. Evidently, I haven't.  
15 You wouldn't be asking it again. What are you  
16 asking that I haven't answered earlier? Otherwise,  
17 let's move on.

18 MR. SAXBE: Well, I appreciate that, and  
19 this is not intended to harass you or to delay  
20 this. There will be from time to time differences  
21 of --

22 THE WITNESS: I'm sure we will have dais  
23 exima (phonetic). Let's go about it.

24 MR. SAXBE: So could you read the

1 have to get involved. I don't want to get  
2 involved. I don't like this kind of record.

3 MR. SAXBE: Well, forgive my redundancy  
4 if you believe that that is what's occurred,  
5 Mr. Rizzo. I apologize for that if that has  
6 occurred. However, I would like an answer to that  
7 question, which is does the Tobacco Institute  
8 communicate with any governmental officials in Ohio  
9 except through its contract lobbyists?

10 MS. SHERMAN: Objection.

11 A. Or through me.

12 Q. Or through you?

13 A. No.

14 Q. Thank you. And, again, I am not  
15 intending to delay this or to harass you.

16 MR. HART: Again, you're asking direct  
17 communication.

18 MR. SAXBE: Those are direct  
19 communications we're talking about.

20 Q. Who is Jack Advent, Mr. Rizzo?

21 A. Jack Advent is now the executive director  
22 of the Veterinary Medicine Association. He was  
23 until sometime last year the executive director of  
24 the Ohio Tobacco and Candy Dealers Association.

1 Q. And he does not speak or act -- has not  
2 spoken or acted on behalf of the Tobacco Institute,  
3 to your knowledge?

4 A. Not with my approval or whatever. I  
5 anticipate that he represents the wholesalers.

6 Q. How about Rick Ayish? Do you know who  
7 Rick Ayish is, A-Y-I-S-H?

8 A. Yes, I do. He represents Philip Morris.

9 Q. And he does not speak or advocate on  
10 behalf of the Tobacco Institute, does he?

11 A. No.

12 Q. Would the same be true for Mr. Brooke  
13 Cheney?

14 A. Yes.

15 Q. He represents R. J. Reynolds Tobacco  
16 Company?

17 A. Yes.

18 Q. Do you know Mr. Chan Cochran?

19 A. I know who he is, yes.

20 Q. Who is he?

21 A. He is a public affairs contract person  
22 for Philip Morris.

23 Q. Does he perform any services for the  
24 Tobacco Institute?

1 A. No.

2 Q. Does he perform any service for any  
3 entity which the Tobacco Institute is a member of or  
4 associated with?

5 A. Philip Morris.

6 Q. Philip Morris is associated with the  
7 Tobacco Institute?

8 A. Yes.

9 Q. My question is does Mr. Cochran do any  
10 work on behalf of an entity that the Tobacco  
11 Institute is associated with?

12 A. Not that I know of.

13 Q. David Corey, do you know who David Corey  
14 is?

15 A. No.

16 Q. Do you know who Paul Corey is?

17 A. No. Professor Irwin Corey, I do know  
18 him.

19 Q. How about Phil Craig?

20 A. I know who he is, yes.

21 Q. Who is Phil Craig?

22 A. Phil Craig is the lobbyist for the  
23 restaurant and for the licensed beverage  
24 association.

1 Q. Does he act or perform any services on  
2 behalf of the Tobacco Institute?

3 A. No.

4 Q. Do you know who Steve Dimon is?

5 A. Yes.

6 Q. Who is Steve Dimon?

7 A. Steve Dimon is the lobbyist for the  
8 wholesalers.

9 Q. And he does not act or speak on behalf of  
10 the Tobacco Institute, does he?

11 A. No.

12 Q. Do you know who Bruce Hennes is?

13 A. Yes.

14 Q. Who is Bruce Hennes?

15 A. Bruce Hennes is contract public affairs  
16 person for R. J. Reynolds Tobacco Company.

17 Q. And he does not act or perform any  
18 services on behalf of Tobacco Institute, does he?

19 A. No.

20 Q. Do you know Andy Herf at the Retail  
21 Merchants?

22 A. I do.

23 Q. And he doesn't speak or act on behalf of  
24 the Tobacco Institute?

1 A. No.

2 Q. How about Tom Jackson of the Ohio Grocers  
3 Association?

4 A. Yes, I know who he is.

5 Q. And does he speak or act on behalf of the  
6 Tobacco Institute?

7 A. No, he speaks and acts on behalf of the  
8 grocers.

9 Q. Do you know who Harry Kaiser is?

10 A. Yes.

11 Q. Who is Harry Kaiser?

12 A. Harry Kaiser is with the Labor Management  
13 Council of the AFL-CIO, or at least he was during  
14 this period. He has a new position and is in  
15 Washington.

16 Q. Does he speak or act on behalf of the  
17 Tobacco Institute?

18 A. No.

19 Q. John Kelley? Who is John Kelley?

20 A. John Kelley, John Kelley.

21 Q. And we've talked about John Mahaney, who  
22 is the Ohio Council of Retail Merchants?

23 A. Yes.

24 Q. He does not speak or act on behalf of the

1 Tobacco Institute, does he?

2 A. No.

3 Q. Do you know Beth Moore, the Petroleum  
4 Council, Ohio Petroleum Council?

5 A. Yeah, I know who she is.

6 Q. Does she speak or act on behalf of the  
7 Tobacco Institute?

8 A. No.

9 Q. David White of the Ohio Farm Bureau?

10 A. No, he does not.

11 Q. How about Craig Williamson of the cigar  
12 association?

13 A. No, he speaks for the cigar association.

14 Q. Do any of these individuals or  
15 organizations speak or act on behalf of the Tobacco  
16 Institute?

17 A. They speak on behalf of their  
18 organization.

19 Q. Does that listing of individuals  
20 constitute the Tobacco Team that you've talked about  
21 in the State of Ohio?

22 A. Yeah, pretty much.

23 Q. Are there any other names that I've left  
24 off?



1 A. I can't think of anything offhand.

2 MS. SHERMAN: What time period are we  
3 talking about?

4 MR. SAXBE: For the period of time that  
5 you have any knowledge of.

6 Q. Are all of these individuals contract  
7 lobbyists?

8 A. Contract lobbyists?

9 Q. For anyone?

10 A. I assume they are all lobbyists for their  
11 associations.

12 Q. Are there any elected officials or  
13 governmental officials who are members of the  
14 Tobacco Team that you've talked about?

15 A. No.

16 Q. I give you what's been marked as  
17 Plaintiff's Exhibit No. 5, Mr. Rizzo. Can you  
18 identify that document?

19 A. Yes. This is a document that's prepared  
20 by Philip Morris Corporation. It's a -- I think  
21 it's a monthly clip of news issues that relate to  
22 the tobacco industry from various Ohio newspapers.

23 Q. And you received this monthly from Philip  
24 Morris?

1 A. Yes, I do.

2 Q. And this is specifically related to --  
3 I'm sorry, this is developed out of clippings coming  
4 from Ohio newspapers?

5 A. That's right.

6 Q. It reflects there's a Section 2, local  
7 issues, Board of Health, Section 3, tobacco sales to  
8 minors, do you see that?

9 A. Yes.

10 Q. Is there a Section 1 that is circulated  
11 by Philip Morris?

12 A. I don't know. You would have to talk to  
13 Philip Morris.

14 Q. Are all the people on this list persons  
15 who you communicate with in the State of Ohio?

16 A. No, not necessarily. There are people on  
17 there whose names I don't recognize. And, again,  
18 this is a document that Scott Fisher and Derek  
19 Crawford, that they developed internally for their  
20 purposes and that since it is a clip of news  
21 articles from Ohio papers, they send me a copy of  
22 it. And, you know, particularly as you're talking  
23 about local government, this is a way of getting an  
24 idea of what's going on in local government.

1 Q. Is Scott Fisher located in the State of  
2 Ohio, do you know?

3 A. He is.

4 Q. How about Mr. Crawford?

5 A. He is.

6 Q. With respect to Mr. O'Grady, you  
7 indicated you regularly approve his registration  
8 statements and you file certain statements with the  
9 State of Ohio, do you recall that?

10 A. Uh-huh.

11 Q. I hand you what is marked as Exhibit 6  
12 and Exhibit 7. Can you identify those two exhibits,  
13 Mr. Rizzo?

14 A. These are employer lobbyists  
15 registrations forms that are filed with the State of  
16 Ohio by me.

17 Q. And signed by you on the last page?

18 A. Yes, they are.

19 Q. And they reflect that your two contract  
20 lobbyists who have registered on behalf of Tobacco  
21 Institute are Fred Viero and Eugene P., Pete  
22 O'Grady?

23 A. Yes.

24 Q. The second page, at the bottom of the

1 page there is a listing of bills and resolutions.

2 Do you see that?

3 A. Uh-huh.

4 Q. And are you aware of any other reportable  
5 activity that your contract lobbyists had other than  
6 actively advocating on House Bill 299 and House Bill  
7 350?

8 A. Obviously not.

9 Q. On Exhibit 7 on page 6 reflects that your  
10 legislative agents had no reportable expenditures  
11 during that period. Do you see that?

12 A. Uh-huh.

13 Q. Is that still true and accurate to the  
14 best of your knowledge?

15 A. The best of my knowledge, yes.

16 Q. And on page 6 of Exhibit 6 it reflects a  
17 reportable expense of \$500.

18 A. Uh-huh. Ohio ALEC night, A-L-E-C.

19 Q. And was that a general contribution to  
20 ALEC for their convention at that time?

21 A. No. That was a -- what I made reference  
22 to before as to periodically we may participate in a  
23 joint sponsorship of a night at an event. That's  
24 ALEC '96. We were a part of the Ohio Night,

1 sent in?

2 A. I believe it's monthly. It's monthly or  
3 quarterly, depending on legislative activity, how  
4 much activity there is, but I think it's monthly.

5 Q. Do any persons other than Mr. Viero and  
6 Mr. O'Grady provide reports to you as to activities  
7 in the State of Ohio?

8 A. No.

9 Q. Do any of the associate organizations  
10 provide written reports to you as to activities in  
11 the State of Ohio?

12 A. Nothing other than whatever reports they  
13 provide to their membership, normal published  
14 bulletins, reports, that type of thing. There's no  
15 separate lobby report or analysis or anything like  
16 that, if that's -- which would be comparable to what  
17 Pete provides me.

18 Q. What authority does Pete have or does --  
19 does Fred do any work for you or is it Pete  
20 exclusively, Fred Viero?

21 A. Fred, I believe that Fred covers the tort  
22 reform issues. I think that's primarily what he --  
23 he follows that. Back during the time when the  
24 State of Ohio was in the business of passing major

1 Q. Does O'Grady conduct any activities for  
2 TI other than lobbying the Ohio General Assembly?

3 A. Basic lobbying, it's primarily the  
4 legislature but also the executive agencies. If  
5 there is contact that needs to be required with the  
6 executive agencies, Pete will do that.

7 Q. Does O'Grady represent Tobacco Institute  
8 at any meetings where elected officials or appointed  
9 governmental officials are not present?

10 A. At meetings where governmental officials  
11 or representatives are not present?

12 Q. Yes, sir.

13 A. I don't know. That's not? I don't  
14 know.

15 Q. Does O'Grady ever represent Tobacco  
16 Institute at meetings of any trade organizations in  
17 Ohio?

18 A. I would assume that he does.

19 Q. Do you know what trade organizations  
20 those would be?

21 A. No.

22 Q. Do you know of any specific occasion  
23 where Mr. O'Grady has represented the Tobacco  
24 Institute at such a meeting?

1 A. I would assume that particularly with  
2 regard to activities relative to tort law he may  
3 have been. Other organizations that were involved  
4 in tort reform, he would be representing the Tobacco  
5 Institute at those.

6 Q. Would that be the alliance or the Ohio  
7 Alliance for Tort Reform?

8 A. I don't know. I don't know specifically  
9 what the name of those organizations were, if that's  
10 what it is, then that's what it was. You know,  
11 again, baseline is if it affects the industry, we're  
12 going to find out what it is. And if it's something  
13 that we've got an opinion on, then that opinion will  
14 come through Pete. So, you know, I don't know how  
15 -- you know, if you're asking about names, dates,  
16 places, what he did, talk to him.

17 Q. We probably will.

18 MS. SHERMAN: We'll visit the court  
19 before that occurs.

20 Q. Does Mr. O'Grady ever appear at  
21 conventions or at seminars on behalf of Tobacco  
22 Institute?

23 A. Conventions or seminars? We have our  
24 seminar.

1 Q. Tobacco Institute?

2 A. Yes, in November. He is there. Does he  
3 appear at conventions? I'm certain that he appears  
4 at conventions. And, you know, he's a multi-client  
5 lobbyist. So I don't know where all he appears.  
6 You know, he may appear at things in result of  
7 contractual relationships he has with other  
8 clients.

9 Q. I'm speaking of with the Tobacco  
10 Institute. Does he make these appearances on behalf  
11 of the Tobacco Institute, to your knowledge?

12 A. I don't know. I assume that -- you know,  
13 I assume that Pete is where he needs to be when  
14 there's something going on that affects the  
15 industry.

16 Q. Do you recall any specific instance where  
17 O'Grady has appeared at a convention or at a seminar  
18 on behalf of Tobacco Institute?

19 A. Any?

20 Q. Yes.

21 A. Yeah, I gave you one, when we have our  
22 retreat, our annual retreat every year.

23 Q. Other than the Tobacco Institute  
24 retreat?



1 A. I don't know.

2 Q. Do you know whether or not O'Grady ever  
3 provides or circulates or distributes any  
4 information that is specific to the Tobacco  
5 Institute or created by the Tobacco Institute?

6 A. That's what he does. He's a lobbyist.

7 Q. And what type of materials does he  
8 distribute or circulate on behalf of the Tobacco  
9 Institute?

10 A. Materials that have been generated by the  
11 Tobacco Institute or have been provided by the  
12 Tobacco Institute but have been generated by  
13 somebody else.

14 Q. During the relevant periods of time that  
15 we're talking about here what type of materials has  
16 he circulated?

17 MS. SHERMAN: I'd just like to interrupt  
18 now and just remind you and pose a standing  
19 objection that we are just in the heart of what the  
20 judge said this deposition is not supposed to be  
21 about. I don't want to cut you off in the sense of  
22 I want you to be able to ask what you can ask. The  
23 judge can plainly see that what's at issue here are  
24 the lobbying contacts for the State of Ohio, but it

1 really shouldn't be comprising this much time.

2 A. Again, counselor, I'm answering what I  
3 seem to have answered this question in my belief at  
4 least two or three times previously and I don't know  
5 what you're driving at. If you could ask me a  
6 better question, I could give you a better answer.

7 Q. Okay. I'll try.

8 A. He has distributed materials that were  
9 either directly generated by the Tobacco Institute  
10 or were provided by the Tobacco Institute to him as  
11 being representative of positions that the industry  
12 was taking through TI.

13 Q. Can you identify specifically any of  
14 those materials? And if you can't, you can't. This  
15 is not a test.

16 A. Okay. You want something specific.  
17 Okay. Economic studies that we did on the effect of  
18 a tax increase, increase in the cigarette tax back  
19 during the time the legislature was weighing the  
20 possibility of cigarette tax increase, that is an  
21 example of something.

22 Q. Anything else?

23 A. I can't. You know, yesterday is  
24 yesterday, today is today and tomorrow is yet to

1       come.

2       Q.           I believe this is Exhibit No. 8. Can you  
3       identify that document, please, Mr. Rizzo?

4               MS. SHERMAN: While he's reviewing it,  
5       can I just ask you to decide what would be a  
6       convenient breaking time just so I can be sure we  
7       have a way out and back in to this building?

8               MR. SAXBE: Sure.

9       Q.           Can you identify that document,  
10      Mr. Rizzo?

11      A.           No, I can't.

12      Q.           Is this the document that you referenced  
13      had been created by the Tobacco Institute and which  
14      you believe Mr. O'Grady may have circulated?

15      A.           No, I don't. Certainly the information  
16      that was developed looks like it had come from our  
17      economist, but I don't know who the specific author  
18      of this was or who the specific distributor of it  
19      was.

20      Q.           At the Tobacco Institute is this the type  
21      of material that Mr. Orzachowski prepares?

22      A.           The types of things that Bill Orzachowski  
23      prepares are clearly labeled the Tobacco Institute,  
24      and with him as an author. I don't know who

1 produced this piece, whether it was done by a public  
2 relations consultant from information that came from  
3 a variety of sources.

4 Q. You've never seen this document before  
5 today?

6 A. I don't recall it specifically. It's not  
7 dated, I don't think, is it?

8 MR. SAXBE: We'll take a break. Note the  
9 time.

10 (Recess taken from 5:27 to 5:47.)

11 MR. SAXBE: Back on the record.

12 Q. Mr. Rizzo, are you aware of any studies  
13 that are specific as to the State of Ohio which  
14 Tobacco Institute has created?

15 MS. SHERMAN: Same time frame?

16 A. Any studies? We have produced  
17 information, statistical information, relative to  
18 the economic impact of an increase in the tobacco  
19 tax on a variety of issues. But insofar as studies,  
20 per se, some of that information has been used by  
21 contractors to the companies and put in a -- you  
22 know, once the information is used, has been  
23 produced. But in terms of studies that TI did of a  
24 major nature, no, nothing of that nature.

1 Q. We've talked earlier about the Ohio  
2 Tobacco Team, which you've referred to. Does this  
3 have other names or references, such as the Ohio  
4 Tobacco Family or the Ohio Tobacco Coalition?

5 A. Could be. There's no key. It's not a  
6 different group. It just may be from time to time  
7 the use of a different term, same people.

8 Q. I'll give you what's been marked as  
9 Exhibit No. 9. Can you identify that document?

10 MS. SHERMAN: Can I just note for the  
11 record --

12 A. April 7, 1995, that was before I cared  
13 about any of this.

14 MS. SHERMAN: It's also before the time  
15 period.

16 Q. The reference here is to the Ohio -- to  
17 the Tobacco Coalition Group. To your knowledge is  
18 that referring to the entity that you have referred  
19 to as the Tobacco Team?

20 A. I have no knowledge of what that's  
21 referring to. You know, I don't know what was going  
22 on then.

23 Q. All right. Do you recognize the names to  
24 whom this document was sent?

1 A. Yeah, Pruett was with TI at that time.

2 The rest of them were representatives of PM.

3 Q. Do you know who Harry Lehman was?

4 A. I believe he was at that time a lobbyist  
5 for PM. He's no longer a lobbyist for them.

6 Q. Is he an attorney?

7 A. I don't know. I think he is.

8 Q. Have you had any contact with Harry  
9 Lehman during the relevant periods of time that we  
10 are addressing here?

11 A. None.

12 Q. Mr. Rizzo, I'm going to give you what's  
13 marked as Plaintiff's Exhibits 10 and 11, and while  
14 these are out of the relevant periods of time, and I  
15 don't intend to inquire as to the contents of these  
16 documents, they reflect a number of names. Is this  
17 also a listing of the Ohio Tobacco Team during the  
18 period of time that we've been inquiring into?

19 A. Yeah. As I say, generally when you have  
20 like a Tobacco Team or whatever, that is the large  
21 group, the extended family, whatever you want to  
22 call it.

23 Q. And after you came on board at the  
24 Tobacco Institute and to the May 5, '97 date of

1 filing did you call any meetings of the Ohio Tobacco  
2 Team, which involve these folks?

3 A. Yes.

4 Q. And did those meetings occur in the State  
5 of Ohio?

6 A. Yes, they did.

7 Q. And what was the subject matter of those  
8 meetings?

9 MS. SHERMAN: I just want to make sure  
10 we're talking about meetings after the filing of the  
11 complaint?

12 MR. SAXBE: No, no, I'm talking about  
13 during the relevant periods of time we're discussing  
14 here, trying to be good.

15 MS. SHERMAN: Good.

16 THE WITNESS: It's breaking his heart.

17 A. Excuse me, counselor, would you please  
18 rephrase the question or do you want to have it  
19 recalled?

20 Q. I think my question was --

21 A. Did I call meetings?

22 Q. Did you call meetings and were they  
23 conducted in the State of Ohio?

24 A. Yes, I did call meetings and, yes, they

1 were conducted in the State of Ohio.

2 Q. And what was the subject matter of those  
3 meetings?

4 A. Legislation.

5 Q. And aside from Mr. O'Grady all of the  
6 individuals -- besides Mr. O'Grady -- yes, besides  
7 Mr. O'Grady, all of the other individuals were  
8 representatives of other organizations?

9 A. Yes. They would be either a  
10 representative of allied organizations or they would  
11 be contractors to member companies.

12 Q. And do you recall at any of those  
13 meetings any public officials being present?

14 A. Periodically Senator Doug White would be  
15 there. I know that he was carrying legislation that  
16 was the Ohio tobacco control legislation that had  
17 been developed jointly by the retailers and the  
18 industry and everything to deal with tobacco.

19 Q. Did Senator White, or at that time it may  
20 have been Representative White, attend all of the  
21 meetings of the Ohio Tobacco Team?

22 A. No, and he would appear at some of the  
23 meetings as it was appropriate to talk -- for him to  
24 talk about what was going on.



1 Q. Were there any expenses associated with  
2 conducting these meetings of the Ohio Tobacco Team  
3 other than what we've previously talked about, room  
4 rental?

5 A. Not that I'm aware of, not that I had  
6 anything to -- that I was involved in.

7 Q. Did Tobacco Institute provide  
8 refreshments at these meetings?

9 A. Usually there were refreshments. And  
10 whoever had the room responsibility picked up the  
11 refreshments.

12 Q. Were there any dinner meetings that the  
13 Tobacco Institute paid for the dinner for everybody?

14 A. I'm trying to think whether we had any  
15 luncheon meetings. They would have been luncheon  
16 meetings rather than dinner meetings. And we may  
17 have, probably did, but I can't remember. There  
18 would not have been many of them, and they would  
19 have been a working luncheon type thing.

20 Q. Anyone take any minutes of these  
21 meetings?

22 A. No. Minutes at lobbyist meetings? My,  
23 my.

24 Q. I'm sorry, I missed that.

1 A. I said minutes at lobbyist meetings? My,  
2 my. I thought I was the last optimist.

3 Q. Has Bruce Hennes ever organized any  
4 meetings on behalf of the Tobacco Institute?

5 A. On behalf of the Tobacco Institute? Not  
6 to my knowledge.

7 Q. How about on behalf of the Tobacco Team?

8 A. The only thing that I know that Bruce was  
9 involved in specifically in terms of meetings is  
10 that his consulting group puts on the Ripley Tobacco  
11 Festival. I know that they do that. But in terms  
12 of whatever else they do, that would be whatever  
13 else he does for their contractor. He is not a  
14 contractor of ours.

15 Q. Does the Tobacco Institute participate at  
16 the Ripley Tobacco Festival?

17 A. We contribute to it, \$1,000.

18 Q. Does the Tobacco Institute have a booth  
19 or any informational material at this event?

20 A. No. Our support is purely financial to  
21 assist in holding the event.

22 Q. Do you participate?

23 A. I went last year, simply because -- well,  
24 of course, when I came on board in July of '96, you

1 know, there were these strange things on the budget  
2 and there was \$1,000 for the Ripley Tobacco  
3 Festival. What the hell is a Ripley Tobacco  
4 Festival. You know, and I'm not a tobacco person.  
5 So one of the things you do is you find out -- you  
6 go to a factory, see how they manufacture tobacco,  
7 you know, and everybody says you go to the Ripley  
8 Tobacco Festival. And so last year my wife and I  
9 went to the Ripley Tobacco Festival. And it was  
10 interesting.

11 Q. Ripley, Ohio?

12 A. Yes. I think it's in Ohio.

13 Q. Home of U.S. Grant?

14 A. That's right. Absolutely. Stayed in a  
15 bed and breakfast. Some neat bed and breakfasts  
16 down there. That's a beautiful little community.

17 Q. Anybody else from the Tobacco Institute  
18 attend that event?

19 A. From the institute? I don't think there  
20 was anybody else from the institute. A number of  
21 the company people were there.

22 MS. SHERMAN: We'll just note for the  
23 record that it's post the time period.

24 MR. SAXBE: What's that?

1 MS. SHERMAN: The Ripley Tobacco Festival  
2 is post the filing of the complaint, last year.

3 THE WITNESS: The time I went last year  
4 was in August of '97.

5 Q. You indicate you would check your budget  
6 periodically. The prior year was the contribution  
7 you made in '97 similar to that you made in '96?

8 A. There was a budget item in '96 but, in  
9 fact, that check was never written in '96, simply  
10 because there was a hiatus in there of people. And,  
11 you know, I never got -- I write a check when I get  
12 a bill, never got a bill. I didn't know what it  
13 was, whatever. So that \$1,000 reverted with the  
14 rest of my budget at the end of the year.

15 You know, again, the first part of my  
16 time I'm trying to find out who these people are. I  
17 mean, you get a meeting of a bunch of people, and  
18 you try to figure out who they are, what they work  
19 for, what the pecking order is, what the hell is  
20 going on. I mean, you spend some time just trying  
21 to figure out what's going on. And that at a big  
22 part of this period of time from the first of July  
23 in 1996, through, you know, the first year was  
24 finding out who all these people are, what they tend

1 to do, and what my role is vis-a-vis these people.  
2 So there's -- there may be some strange stuff that I  
3 don't know, because I hadn't, you  
4 know --

5 Q. When is that festival, Mr. Rizzo?

6 A. It's in August.

7 Q. So in August of '97 you went, but in  
8 August of '96 --

9 A. I did not go, no.

10 Q. You didn't go. Did anyone participate  
11 from the Tobacco Institute in '95?

12 A. Not that I know of. I don't know. I  
13 don't know whether Bobby Pruett went or whether any  
14 of the other institute people went or not.

15 Q. Was it a budget item in '95?

16 A. I don't know.

17 Q. When you asked about it, were you told  
18 that historically we helped with the tobacco  
19 festival?

20 A. No, it was, in fact, I guess stumbled on  
21 it as we were sometime in the spring when there was  
22 talk -- they were talking about the Ripley Tobacco  
23 Festival. And I had been talking to the company  
24 people. They said you really need to go to that,

1     you need to see it. I said great. Who runs it.  
2     Well, Bruce Hennes' outfit organizes the tobacco  
3     festival. Okay. I said, well, I got an item in the  
4     budget, I got \$1,000 in there, which they knew  
5     because they had participated in the formation of  
6     the budget. And so they said, okay, well, great.  
7     You ought to go. So I went last year. I don't  
8     think I need to go this year. I went last year.

9             MS. WATTERS: You'll miss the clogging.

10    A.             It's one of those events where --

11             MR. HART: Did you say flogging?

12             MS. WATTERS: Clogging.

13    Q.             Any other festivals or events that TI  
14             supports in Ohio?

15    A.             No.

16    Q.             Are there regular Tobacco Team meetings  
17             in Ohio or have there been during your tenure,  
18             regular meetings of the Tobacco Team in Ohio?

19    A.             Yeah, I mean, that's what I do. When  
20             there's something going on in Ohio, do these people  
21             get together locally and me not be there? I assume  
22             they do. But --

23    Q.             Meetings you called of the Tobacco Team,  
24             do you do that on a monthly basis or bimonthly?

1 A. No, it would be on a periodic basis. It  
2 depends on two things. Primarily it depends on  
3 what's going on. If there's a lot going on, we may  
4 have more frequent meetings, either face to face or  
5 conference calls. If things are slow, there's not  
6 things going on, we may not meet for a couple or  
7 three months.

8 Q. At these meetings that you have with the  
9 Tobacco Team you indicated you speak primarily about  
10 legislative activities; is that correct?

11 A. Yeah, almost exclusively.

12 Q. And do you make any assignments or is  
13 there any direction which you give the group as to  
14 activities that it should be or they should  
15 individually be engaged in?

16 A. Well, generally speaking, the nature of  
17 the meetings is that as we approach a particular  
18 subject, whether it's a specific piece of  
19 legislation that's been filed by number or whether  
20 it's just an issue in general, and as we talk to it,  
21 as we come to some conclusion as to who's going to  
22 do what, it's sort of like organizing a picnic.  
23 Somebody brings the cake, somebody brings the  
24 sandwiches, somebody brings the pop and you all sit

1 down and you have a picnic.

2 Q. And do you chair these meetings?

3 A. Yes.

4 Q. The attendees at these meetings represent  
5 diverse organizations that you have common interest  
6 with?

7 A. May or may not.

8 Q. Are any of these organizations -- strike  
9 that. Is the Tobacco Institute a member of any of  
10 these organizations that are participants in the  
11 Ohio Tobacco Team?

12 A. If we -- and I don't -- of specific  
13 organizations, we may be a member, we may be an  
14 associate member or something like that. We are not  
15 a member the way a member of that -- the way a  
16 member of that industry would be a member. That's a  
17 common practice among trade associations. Most of  
18 these associations our relationship to them is we  
19 are a supplier. We are a manufacturer. We are a  
20 supplier to that industry.

21 Q. Mr. Rizzo, I'm giving you what's marked  
22 as Exhibit 12. Can you identify that?

23 MS. SHERMAN: Just note for the record  
24 this is also before the time period.



1 A. No. That's 1995.

2 Q. Is this a document which you utilize in  
3 your meetings with the Tobacco Team?

4 A. No.

5 Q. Do you utilize documents similar to this?

6 A. No.

7 Q. When you meet with the Ohio Tobacco Team,  
8 are assignments made as to who should contact  
9 specific governmental officials on behalf of the  
10 team?

11 MR. HART: Objection, asked and  
12 answered.

13 THE WITNESS: Pardon me?

14 MR. HART: Asked and answered. Go  
15 ahead.

16 A. Yeah, there are times that that's done,  
17 who's going to meet with so and so.

18 Q. And do you direct who should do what?

19 A. Well, I chair the meeting, direct it,  
20 referee it, whatever you want to call it.

21 Q. With respect to the Ohio Council of  
22 Retail Merchants we discussed, is the Tobacco  
23 Institute a member of that organization?

24 A. We may be a -- as I said, we may be an

1       associate member or I don't recall what the status  
2       of that relationship is, but it's not -- we're not a  
3       member of -- we're not a retailer.

4       Q.               Do you know whether or not you pay dues  
5       to the Ohio Council of Retail Merchants?

6       A.               We do not pay dues. We provide -- we  
7       make a -- because there's not a -- you know, again,  
8       we're not a member and there's not a dues  
9       structure. If any of you have had any experience  
10      with association dues and structures, it's usually  
11      in the mind of the executive director and not always  
12      in the mind of the members. No, we do not pay  
13      dues. We provide financial assistance to the Ohio  
14      Retailers.

15      Q.               Would it surprise you to know that you  
16      are identified -- that the Tobacco Institute was  
17      identified during the relevant periods as an  
18      associate member of the Ohio Council of Retail  
19      Merchants?

20      A.               No, it wouldn't surprise me.

21      Q.               What are your -- what are the Tobacco  
22      Institute's expectations in financially supporting  
23      an organization like the Ohio Council of Retail  
24      Merchants?

1       A.           Well, our expectations are that -- the  
2       ally organizations have one thing in common. At  
3       some point they are all involved from a public  
4       policy issue in issues that are quintessentially  
5       tobacco issues. They're issues that -- they are  
6       retail issues because they are retail issues that  
7       involve the sale of tobacco.

8                   And this has been based on the experience  
9       that I have had with other retail associations. I  
10      was the chairman of the Indiana Retail Council for  
11      two years myself. It is a very common practice  
12      among suppliers in the retail industry to be  
13      financial supporters of organizations that are  
14      important to their -- the people to whom they supply  
15      product.

16                  I was, for example, I was the chairman of  
17      the Indiana Retail Council. I was also a  
18      representative -- I was also an officer with a very  
19      large retail chain drug company. If we were  
20      involved in activities, whether they were  
21      legislative or whether they were activities that  
22      were very time-consuming as providing services to a  
23      specific aspect of the retail community, one of the  
24      things that you do would be you would come around to

1 that community and say, hey, we've spent an  
2 inordinate amount of time dealing with your issues.  
3 You know, it would be nice if we could get some  
4 assistance from some of your people. And we would  
5 go out and see if we could round up some money from  
6 some of our suppliers.

7 And, again, if it was a tobacco supplier,  
8 we would go to the tobacco companies and say, hey,  
9 you know, we've been involved in tobacco issues.  
10 Can you guys help out the Indiana Retail Council?  
11 Can you guys help out the Ohio Council, whatever.  
12 That is common practice among every industry trade  
13 association that I know of. And some associations  
14 will recognize this relationship by setting up a  
15 classification of involvement, call it associate  
16 members or whatever, just to recognize. And it's a  
17 way also to market, look, you know, we're getting  
18 money out of this industry, why aren't we getting  
19 money out of you. It's a marketing tool for that.

20 Q. I'm going to give you a series of  
21 documents here that relate to the Ohio Council of  
22 Retail Merchants, if you would just look at them and  
23 identify them for me if you can. Have you ever seen  
24 that document that's marked as Exhibit 13,

1 Plaintiff's Exhibit 13?

2 A. Yeah, this is the -- when you are -- if  
3 you are an associate member, you go on a mailing  
4 list and you get all the stuff that goes out to  
5 their members. This is the type of thing that they  
6 send to their retail members as, you know, something  
7 that tells them the services that they have  
8 available to their members.

9 Q. And these services are not confined to  
10 lobbying activities, are they?

11 A. May or may not be. I mean, obviously,  
12 industry associations do more than lobby. There was  
13 a time they didn't lobby. There was a time -- you  
14 know, but that time has long since gone during our  
15 lifetime. Now much of the activity of associations  
16 is spent in lobby activities, directly or  
17 indirectly.

18 Q. Does the Ohio Council of Retail Merchants  
19 lobby on any specific issues on behalf of the  
20 Tobacco Institute?

21 A. Not on behalf of the Tobacco Institute.  
22 They lobby on behalf of the Ohio Retailers, and you  
23 know John Mahaney and I know John Mahaney and  
24 anybody else that knows him knows he works for his

1 people. He'll take money from anybody, but he works  
2 for his people. Now, are you proposing that we're  
3 buying John Mahaney? I don't think so. And I've  
4 known John Mahaney probably as long as or longer  
5 than you have. So no.

6 Q. This exhibit in the first sentence  
7 specifically discusses its activities besides  
8 lobbying activity, doesn't it?

9 A. Yes, it does. So? By the way --

10 Q. Yes?

11 A. We lavish upon John Mulhaney and the Ohio  
12 Retail Merchants \$2,500.

13 Q. Annually?

14 A. Annually.

15 Q. And he says that's not enough probably?

16 A. You know John Mahaney.

17 Q. Exhibit 14 is another communication from  
18 the Ohio Council of Retail Merchants. Can you  
19 identify that?

20 A. As I say, this is the type of thing that  
21 the members get.

22 Q. Again, it's touting the many services,  
23 activities and educational opportunities it affords  
24 its members, doesn't it?

- 1 A. Yes.
- 2 Q. Exhibit 15?
- 3 A. Okay.
- 4 Q. That's informational services about --
- 5 A. Lobby activities.
- 6 Q. Legislative activities from the
- 7 perspective of the retail merchants?
- 8 A. That's right.
- 9 Q. Do you contribute to or participate in
- 10 the preparation of any of these council updates?
- 11 A. No.
- 12 Q. I'll give you what's marked as Exhibit
- 13 16. Have you seen that before, Mr. Rizzo?
- 14 A. I'm certain I received it. I would have
- 15 thrown it away because it doesn't relate.
- 16 Q. It relates to --
- 17 A. Services, legal services.
- 18 Q. And it doesn't relate to lobbying
- 19 activities, does it?
- 20 A. No, it doesn't seem -- well, I don't
- 21 know. They're talking about talking to their
- 22 counsel. So I don't know what they say to their
- 23 counsel.
- 24 Q. I'll give you Exhibit 17.

1 Q. And can you identify that document?

2 A. Yeah, this is a report to their members  
3 on tobacco activities.

4 Q. Did the Tobacco Institute participate in  
5 the preparation of any of the information that is  
6 contained in this update?

7 A. It's -- I don't know that the association  
8 did. No, I suspect that this was -- House Bill 299,  
9 which was basically their bill, I would imagine -- I  
10 don't know. I would imagine that the analysis, the  
11 side by side comparison, my suspicion is that that  
12 was probably prepared by the Ohio Retail Merchants,  
13 by their lobby team. This is June '96. That was  
14 again before I started.

15 Q. I'll give you what's marked as Exhibit  
16 18.

17 A. I would say that --

18 Q. Can you identify Exhibit 18?

19 A. These, I would imagine, there's not a  
20 date on here, but these look like the -- this is  
21 probably with regard to our We Card program. That's  
22 my feeling on it. That's what they're making  
23 reference to. There's no date on here. I don't see  
24 any time, but I know that these look like the



1 regional meetings that were set insofar as to when  
2 -- where would be the best place to hold the  
3 meetings and where the retailers felt would be the  
4 easiest place to come and what time of the year. So  
5 I think that's probably in regard to the We Card  
6 program.

7 Q. And is it true that the funding for this  
8 program came from an organization that the Tobacco  
9 Institute was an associate of or associated with?

10 A. Yes. The We Card program, we are a  
11 member of that together with a number of  
12 associations. So I would assume that we provide  
13 either -- we provide either funds or in kind  
14 services, something like that.

15 Q. And that comes out of the Washington  
16 coffers, not out of your budget?

17 A. Yes.

18 Q. Exhibit 19, can you identify that? I do  
19 believe it has a date on it.

20 A. Again, I suppose this is related to the  
21 We Card program. The timing looks apropos.

22 Q. The Tobacco Institute contributed \$2500  
23 to the Ohio Council of Retail Merchants.

24 A. At that time I think it was about maybe

1 2,000 because 2500 is the high. That's what we  
2 contributed.

3 Q. Historically has the Tobacco Institute,  
4 to your knowledge, been an associate member or  
5 supporter of the Ohio Council of Retail Merchants?

6 A. Yes.

7 MS. SHERMAN: Historically in the time  
8 frame or before the time frame?

9 MR. SAXBE: Sure.

10 MS. SHERMAN: That was an "or" question.

11 MR. SAXBE: During the time frame.

12 A. During the time frame they have.

13 Q. Do you know if prior to the time frame?

14 A. I do not know directly. My assumption is  
15 that it's a continuing relationship.

16 Q. Is the Tobacco Institute a member of the  
17 Ohio Grocers Association?

18 A. We're not a -- we may be an associate  
19 member. We're not a member. We contribute \$1,000  
20 to them.

21 Q. Do you know whether or not Tobacco  
22 Institute is an associate member?

23 A. I don't know whether we are an associate  
24 -- whether they have an associate -- we may be, but

1 I don't know. You know, there is no status, you  
2 know. If there is an associate member, that doesn't  
3 mean anything.

4 Q. In 1997 during the relevant periods was  
5 the Tobacco Institute contributing financially to  
6 the Ohio Grocers Association?

7 A. Yes, \$1,000.

8 Q. And did that also occur in 1996?

9 A. Yes.

10 Q. Did it occur in 1995?

11 A. I don't know. I would assume so.

12 Q. Are you aware of any other national  
13 organizations which are members or associate members  
14 of either the Ohio Council of Retail Merchants or  
15 the Ohio Grocers Association?

16 A. I don't know. I've never looked at their  
17 -- I've never looked at it, but I assume that there  
18 are.

19 Q. And is the Ohio Grocers Association  
20 similar to the Ohio Council of Retail Merchants in  
21 that it provides services other than lobbying  
22 services to its membership?

23 A. Yes.

24 Q. Is there any mechanism for -- strike

1 that. I'll give you what's been marked as Exhibit  
2 20, Mr. Rizzo. Can you identify that document?

3 A. It's a report to their members on a  
4 number of activities by the Ohio Grocers  
5 Association. The source of this information can  
6 come from several perspectives. It can come from  
7 either the national -- from their national  
8 affiliate, which may have come -- the original  
9 source of the information may have been the Tobacco  
10 Institute to them, or it could have come from the  
11 Tobacco Institute. You've got a listing of the We  
12 Card seminars that were scheduled for 1997, and an  
13 update on the tobacco ruling and initial ruling on  
14 the Food & Drug Administration.

15 Q. Do you receive these action reports on a  
16 regular occasion from the Ohio Grocers Association?

17 A. Typically. Typically when you advance  
18 financial support to an association like that, they  
19 will put you on their mailing list.

20 Q. How about membership in the Ohio  
21 Association of Convenience Stores? Is the Tobacco  
22 Institute a member of the organization?

23 A. I don't believe we are.

24 Q. Does the Tobacco Institute make any

1 financial contributions to the Ohio Association of  
2 Convenience Stores?

3 A. C stores in Ohio? I can't recall. If we  
4 do, it's -- I just can't recall. I don't think we  
5 are. If we are, it's minor. It would be -- but I  
6 don't believe we are.

7 Q. Do you recall in -- you don't have any  
8 personal knowledge of any payments to or  
9 expenditures on behalf of this organization?

10 A. I can't recall any.

11 Q. With respect to any of these  
12 organizations does the Tobacco Institute participate  
13 at their conventions or at their membership  
14 meetings?

15 A. No.

16 Q. Does the Tobacco Institute purchase any  
17 advertising?

18 A. No, I don't -- no, I don't recall. I'm  
19 trying to think of anything. And, here again, we're  
20 talking about dribs and drabs. We may be talking  
21 about \$500 here; we may be talking about \$1,000  
22 there. We're not talking about money that by any  
23 stretch of the imagination could be considered  
24 significant. There may be situations, and I can't

1 recall a specific situation one way or the other.  
2 There may be a situation where we're asked to  
3 participate in a golf outing or something of that  
4 nature, which we might do, but those are incidental  
5 type things.

6 Q. What are the benefits of an associate  
7 membership of the Tobacco Institute in these  
8 organizations?

9 MS. SHERMAN: Other than what he's  
10 already addressed?

11 A. The reason the industry participates in  
12 associations of this nature is because it maintains  
13 good relationships with their providers. The  
14 retailers, obviously, are important to the  
15 manufacturers. The manufacturers also recognize  
16 that activities that the retailers are involved in  
17 at the state level and at the local level come  
18 directly from the fact that they retail the  
19 industry's product. And in that regard they will  
20 provide support to those activities. It's good  
21 business practice. It's like anything else.

22 Q. Have you heard of the Central Ohio  
23 Licensed Beverage Association?

24 A. I know of them.

1 Q. And does the Tobacco Institute make  
2 contributions to that organization?

3 A. I'm trying to think. I think we do. I  
4 don't know whether we do to the beverage association  
5 or to the restaurant association. One of those two  
6 we do.

7 Q. And is that a contribution that results  
8 in an associate membership with that organization?

9 A. I don't know what the status of that is.  
10 The contribution is in recognition of the fact that  
11 many times the hospitality community, which is  
12 basically restaurants, people that hold liquor  
13 licenses, whatever, end up dealing with issues  
14 related to smoking bans in their establishments.  
15 And in that regard there is an interest on the part  
16 of the association to seek to provide -- to gain  
17 some financial assistance and the costs that are  
18 involved in dealing with those issues at the state  
19 or local level.

20 Q. I'll give you what's been marked as  
21 Exhibit 21.

22 A. 1995.

23 Q. Yes.

24 MS. SHERMAN: Note for the record it's

1 before the time period.

2 Q. Do you recognize Mr. Adams' signature?

3 A. I do.

4 Q. I'm sorry?

5 A. I do.

6 Q. This reflects a check to Central Ohio  
7 Licensed Beverage Association in March of 1995 in  
8 the amount of \$5,000. Were there, to your  
9 knowledge, in the relevant time period similar  
10 checks in 1995 and 19 -- 1996 and 1997?

11 A. I believe there were in '96. What's the  
12 timing on this?

13 Q. March.

14 A. And, yeah, that's normally the way it's  
15 done.

16 Q. Is the Tobacco Institute a -- do you  
17 recall if there was a similar expenditure in '97?

18 A. I can't recall. I believe there was, but  
19 I can't recall specifically.

20 Q. Is the Tobacco Institute a member or  
21 associate member of the Ohio Association of Tobacco  
22 and Candy Distributors?

23 A. I don't know what status -- you know,  
24 whether they have an associate membership or



1 whatever, but we do provide financial support to  
2 them.

3 Q. Could you describe the amount of  
4 financial support in 1995 which --

5 A. Don't know '95.

6 Q. How about '96?

7 A. '96, because '96, '97 and '98 were the  
8 three budgets that I did have the opportunity to  
9 see. And in those situations it was \$10,000.  
10 Recognize that in this regard that manufacturers  
11 sell their product to wholesalers. Manufacturers  
12 don't sell their product to the public. Also, there  
13 are a relatively small amount of wholesalers in  
14 relationship to the number of retailers there are.

15 Q. When these contributions are made to the  
16 Ohio Association of Tobacco and Candy Distributors,  
17 are there any conditions attached to those funds?

18 A. Not at all.

19 Q. Is that organization or does any  
20 organization to which the Tobacco Institute has  
21 contributed in the relevant periods of time required  
22 to sign any type of agreement to receive the funds?

23 A. Not at all.

24 Q. Do you know whether or not it is a

1 practice of the Tobacco Institute to require an  
2 organization to agree to any terms in order to  
3 receive funds?

4 A. I know that it is not a practice to do  
5 that.

6 Q. Do you know whether it ever has been a  
7 practice?

8 A. I do not know.

9 Q. I hand you what's marked as Exhibit 22.  
10 Can you identify that document?

11 A. It's a letter, yeah, thanking us for the  
12 contribution.

13 Q. That's for the \$10,000 contribution?

14 A. Yes.

15 Q. And where was the meeting that he's  
16 referring to?

17 A. Oh, we had dinner.

18 Q. In Ohio?

19 A. In Ohio. My God, I'm in Ohio again.

20 Q. And with respect to Mr. Advent's  
21 statement that you have our pledge to be an  
22 effective advocate and team player in advancing  
23 common industry goals, did you understand what he  
24 meant by common industry goals?

1 A. Yeah, things that they could agree with  
2 that we wanted. I don't expect them to agree with  
3 things that they don't agree with, and frequently  
4 they don't. I also don't read into that letter  
5 anything more than a letter that's thanking someone  
6 for getting some financial support for his  
7 industry. And I would also further add that if it  
8 said something of a negative nature, that that would  
9 be highly unusual. I consider that to be a business  
10 courtesy, thank you.

11 MS. WATTERS: I would just note for the  
12 record we have a full and complete copy for the  
13 witness that we will mark, but we're only dealing  
14 with relevant pages, and that's been copied and  
15 provided for counsel. We did not provide a full  
16 copy. It's not necessary.

17 THE WITNESS: You better win. Your xerox  
18 bills are going to be terrible, bankrupt the state.

19 MR. SAXBE: Mr. Rizzo, I recognize this  
20 may be before your time with the Tobacco Institute,  
21 but have you ever seen these type of directories  
22 before that the Association of Tobacco and Candy  
23 Distributors --

24 A. Basically what associations do at their

1 annual meetings.

2 Q. Are these similar to documents you've  
3 seen since you came on board for the Tobacco  
4 Institute that have been published by the tobacco  
5 and candy distributors?

6 A. Yes.

7 Q. This particular document relates to, and  
8 I ask you to turn to page 47, which is the program,  
9 46 and 47, this doesn't reflect participation by the  
10 Tobacco Institute after you came on board in '96.  
11 Do you recall whether in the 1996 convention that  
12 your organization participated in the program?

13 MS. SHERMAN: Objection.

14 A. I did not participate in the program.  
15 It's possible that there may have been someone from  
16 -- I'm just -- I'm not -- I'm just saying that it  
17 is possible that someone from TI or perhaps someone  
18 from Covington & Burling -- frequently wholesaler  
19 associations will ask for someone from TI to report  
20 on national trends, what's going on nationally,  
21 what's going on within the industry or whatever as a  
22 part of their program, and we will do that.

23 Q. The convention program involves matters  
24 other than legislative and lobbying subjects,

1 doesn't it? At least it did in 1995?

2 A. Yeah.

3 Q. Do you know whether or not the Tobacco  
4 Institute made available in 1995 or in 1996 any  
5 handout material, any pamphlets?

6 A. No.

7 Q. On page 75 is a map and a legend at the  
8 bottom of the page, the Tobacco Institute. Do you  
9 see that?

10 A. Uh-huh.

11 Q. Did the Tobacco Institute provide a  
12 similar insert or page in the 1996 --

13 MS. SHERMAN: Objection.

14 Q. -- directory, if you know?

15 A. I don't know. If it was requested, we  
16 would have provided it.

17 Q. On page 109 you see this letter from  
18 Mr. Chilcote?

19 A. Uh-huh.

20 Q. Did Mr. Chilcote or did anybody from the  
21 Tobacco Institute provide a similar statement that  
22 was contained in the 1996 directory?

23 MS. SHERMAN: Objection.

24 A. I don't know of it. I know I did not

1 have a request for it. So I don't know if there is  
2 one.

3 Q. And I believe, and my memory is fading,  
4 Mr. Advent was a member of the Tobacco Team, the  
5 Ohio Tobacco Team?

6 A. Yes.

7 Q. We've discussed several trade  
8 organizations. Let me ask you about a couple  
9 others. The Ohio Petroleum Retailers, do you  
10 provide any financial support to them?

11 A. I don't believe so. I don't believe we  
12 do.

13 Q. Are there any organizations which I have  
14 not asked you about that the Tobacco Institute  
15 provides financial support to in the State of Ohio?

16 A. I think that's -- in terms of allied  
17 associations, organizations, trade organizations,  
18 that's pretty much it. I can't think of anything  
19 else.

20 Q. Does the Tobacco Institute provide any  
21 financial support to the Ohio Farm Bureau  
22 Federation?

23 A. No.

24 Q. Is it a member of the Ohio Farm Bureau

1 Federation?

2 A. No, we are not.

3 Q. How about the Ohio Coin Machine Operators  
4 Association?

5 A. No.

6 Q. How about an organization called The  
7 Ohioans for Sensible Tobacco Regulation?

8 A. I don't know. I know of -- I do not know  
9 of writing any checks.

10 Q. Do you know what Ohioans for Sensible  
11 Tobacco Regulation is?

12 A. It sounds like a good group of people to  
13 me, but I don't know who they are.

14 Q. And to your knowledge is the Tobacco  
15 Institute in any way associated with or affiliated  
16 with it?

17 MS. SHERMAN: Objection.

18 A. Not that I know.

19 Q. I'll give you what's marked as Exhibit  
20 24.

21 A. Back in 1995 again.

22 Q. Can you identify that document?

23 A. No.

24 MS. SHERMAN: I note for the record it's

1 before the time frame.

2 MS. WATTERS: No, it's not.

3 MS. SHERMAN: Oh, I'm sorry, excuse me.  
4 I take it back.

5 MR. SAXBE: You shall be punished for  
6 that.

7 Q. If you look at the fourth page of this  
8 document --

9 A. Ah, I guess now we find out who they  
10 are.

11 Q. Does that refresh your recollection as to  
12 Tobacco Institute's connection?

13 A. No. This predates me by almost a full  
14 year.

15 Q. Are you familiar with the litigation to  
16 which Mr. Lehman refers?

17 A. No.

18 Q. Does the listing of the Tobacco Institute  
19 as being on the distribution list reflect your  
20 recollection -- refresh your recollection as to  
21 whether or not there continued to be information  
22 circulated to the Tobacco Institute as part of  
23 Ohioans for Sensible Tobacco Regulation?

24 MS. SHERMAN: Objection.



1 MR. HART: Could we hear that question?

2 MR. SAXBE: Let me rephrase it.

3 Q. Does this refresh your recollection as to  
4 whether or not the Tobacco Institute was associated  
5 during the relevant time periods with an entity  
6 known as The Ohioans for Sensible Tobacco  
7 Regulation?

8 A. I have no recollection of this.

9 MS. SHERMAN: Note my objection for the  
10 record.

11 A. And the only -- well, Bob Pruett is on  
12 there, I'm sorry.

13 Q. And Mr. O'Grady is on there, too, isn't  
14 he?

15 A. Yes.

16 Q. Have you received any correspondence  
17 during the relevant period of time from Jones, Day,  
18 Reavis & Pogue or Mr. Lehman relating to any matter?

19 A. I don't recall any.

20 Q. Does the Tobacco Institute receive any  
21 information from any source relating to litigation  
22 in the State of Ohio?

23 A. Do we receive --

24 Q. Information from any source during the

1 relevant time periods as to any litigation in the  
2 State of Ohio?

3 MS. SHERMAN: Can I just hear the  
4 question read back from the beginning?

5 (The record was read back as requested.)

6 MS. SHERMAN: Other than from its own  
7 counsel?

8 MR. SAXBE: Sure, we'll confine it to  
9 that.

10 A. We get information on tobacco related  
11 litigation from many sources. I really don't know  
12 how to answer that question better than that.

13 Q. And what is the purpose of the Tobacco  
14 Institute's receiving or accumulation of that  
15 litigation information?

16 MS. SHERMAN: Objection.

17 Q. Why do you receive that information?

18 MS. SHERMAN: Objection.

19 A. Probably because we're the Tobacco  
20 Institute. We are the national trade association of  
21 the tobacco manufacturing companies, you know.

22 Q. How does it affect your duties as the  
23 vice-president of Region II?

24 MS. SHERMAN: Objection.

1 A. I'm not involved in litigation. Till  
2 now.

3 MR. HART: What's his resume say, sharp  
4 sense of humor?

5 MS. SHERMAN: Truly accurate.

6 Q. Have you ever heard of the Coalition for  
7 Responsible Tobacco Retailing?

8 A. I think that's the We Card group.

9 Q. And that organization, Tobacco Institute  
10 is an affiliate of or associated with?

11 A. That's right.

12 Q. I'll give you what's marked as Exhibit  
13 25. Can you identify that document?

14 A. Yeah, this is materials relative to the  
15 We Card program.

16 Q. Does this document relate to your  
17 activities lobbying on behalf of the Tobacco  
18 Institute?

19 A. My activities with regard to lobbying?

20 Q. Right, or the Tobacco Institute's  
21 activities.

22 A. For the Tobacco Institute? Well, in the  
23 largest overall sense that we're concerned, along  
24 with everybody else, in doing what we can to stop

1 the underage use of our product. This is an effort  
2 that the industry has joined with major other  
3 industries in trying to come up with an educational  
4 program to that end. We are, as the Tobacco  
5 Institute, a supporter of that effort. And other  
6 than that I don't know what more I can say.

7 Q. Do you know to what extent financially  
8 the Tobacco Institute has supported the Coalition  
9 for Responsible Tobacco Retailing?

10 A. I don't know if our participation is  
11 financial or if our participation is in kind in  
12 terms of providing information, providing resources,  
13 what the responsibility is. And, here again, you  
14 asked the question, you know, you're getting around,  
15 why all these names? Because it is not the Tobacco  
16 Institute. It is not Philip Morris. It's not a  
17 whole bunch of people.

18 It's a whole bunch of other people. You  
19 have a name and identified who this whole bunch of  
20 other people is. There's nothing nefarious about  
21 that, nothing unAmerican, illegal, sneaky or  
22 anything else about it. It's a fact that we can't  
23 put this out and say it's the Tobacco Institute  
24 because it's more than the Tobacco Institute. We

1 can't put it out and say it's PM, because it's more  
2 than PM.

3 We can't put it out and say it's  
4 whoever. It's a coalition of people. This is a  
5 common activity with regard to governmental affairs,  
6 with regard to lobbying, with regard to public  
7 affairs. It's as common as anything under the sun.  
8 My God, I shouldn't have to tell that to a trial  
9 lawyer.

10 Q. Is this program directed at avoiding  
11 government participation in this new smoking issue?

12 MR. HART: Object to form, lack of form.

13 A. Avoiding government -- how are you  
14 phrasing that?

15 Q. Look at the third paragraph. None of us  
16 wants the government to do what we can do on our  
17 own.

18 A. And that's unAmerican?

19 Q. No. Certainly not.

20 A. All right.

21 Q. Certainly not.

22 A. All right. I'm with you so far. Now  
23 what are we doing?

24 Q. Thus, the aim of the Coalition for

1 Responsible Tobacco Retailing with respect to the We  
2 Card program is to do something about this issue  
3 before the government does something about it?

4 MS. SHERMAN: Objection.

5 A. Yeah, they're going to be responsible.

6 Q. What role has the Tobacco Institute in  
7 circulating the materials that are attached to this  
8 letter?

9 MS. SHERMAN: Objection.

10 A. We have no role other than, as I said,  
11 the role that I have had, obviously, there are  
12 people with TI who meet as the coalition for --  
13 whatever it is, I've got my glasses off, but at any  
14 rate who participate in the policymaking decisions  
15 along with everybody else and the design of the  
16 programs and all that stuff and everything else.

17 But insofar as the role of this office,  
18 it was to facilitate the meeting, bring in the  
19 retailers and say this is an effort that is jointly  
20 involved by your industry and our industry to deal  
21 with a problem that is a problem and a concern to  
22 both of us, you as retailers and us as  
23 manufacturers. And if we get about and do something  
24 positive on this, we can keep the government from

1 having to come in and run everybody's business.

2 Now, it seems to me that that's what America is all  
3 about.

4 Q. Was Mr. O'Grady involved in this program,  
5 do you know?

6 A. He was probably at the meeting where we  
7 called everybody together, but beyond that I know of  
8 no necessary involvement that he would have.

9 Q. Another one of these We Card exhibits,  
10 Exhibit 26, if you would identify that?

11 A. Basically what happens is that after the  
12 -- when you get the representatives and the  
13 associations together, they identify where are the  
14 locations that it's easiest for everybody to get  
15 their people there, their retailers there so that  
16 they can be trained. What are the dates? They set  
17 the dates.

18 Then from that point the We Card program  
19 distributes the information to the retailers. They  
20 send it out through their channels. In other words,  
21 we make this available to Kroger. They send it out  
22 to their store people. Kroger says we're concerned  
23 about this, we support this, we want you to be  
24 involved.

1 Q. Now, these are training sessions that  
2 were held in 1997. Were similar sessions conducted  
3 in 1996?

4 A. They were.

5 Q. And did the Tobacco Institute have any of  
6 its employees or staff involved in the training  
7 program?

8 A. I don't know -- I don't think we had -- I  
9 don't know that there were any of our people -- I  
10 don't know if any of our public relations people  
11 were involved beyond organizational stuff or  
12 anything like that. And that may be the support  
13 that's provided. As I said before, support can be  
14 financial or it can be in kind. But in terms of the  
15 program itself, the people who put on the program  
16 and the trainers, those people were contracted by  
17 the contractor that operates the program for the  
18 coalition.

19 Q. Other than the We Card program are there  
20 any activities in the State of Ohio which TI  
21 sponsors or is a participant in sponsoring similar  
22 to We Card?

23 MS. SHERMAN: Objection.

24 A. There's nothing similar to We Card. If



1     you're talking about a -- We Card is a hands-on  
2     training program to help train retailers on how to  
3     avoid selling to minors. That's all it is, plain  
4     and simple, how you deal with situations, how you  
5     avoid getting trapped by someone who doesn't have  
6     proper authority. And it's what everybody is  
7     basically attempting to do, which is to cut down the  
8     sales of the product to underage kids.

9     Q.           I'll give you the final We Card document,  
10    which is a letter that was a press release. Can you  
11    identify that?

12   A.           This appears to be the release that  
13   kicked off the program and said what it was all  
14   about.

15   Q.           Mr. Rizzo, I'm going to ask you about a  
16   couple other organizations. Have you ever heard of  
17   the Alliance for Tort Reform?

18   A.           I assume that they are an Ohio industry  
19   tort reform organization. One exists in every  
20   state. You know, I'm not involved with them,  
21   directly or indirectly or whatever, but I do know  
22   there is such an organization.

23   Q.           Are you aware of any financial support to  
24   the Alliance for Tort Reform which came from the

1 Tobacco Institute?

2 A. Not through my budget. I'm not aware of  
3 anything from that perspective.

4 Q. Are you aware of any financial support  
5 for the Alliance for Tort Reform which came from any  
6 of your members?

7 A. No, I don't know what they do, what their  
8 involvements are. I would assume -- I would expect  
9 every manufacturing corporation that's got its head  
10 screwed on straight to be a member of that  
11 organization.

12 Q. But you cannot testify here today as to  
13 the extent of support which may have been given?

14 A. I don't know anything about them. I know  
15 they exist. It's not my job.

16 Q. Do you know a gentleman named Kurt  
17 Tuttle?

18 A. No.

19 Q. How about Luther Liggett?

20 A. No.

21 Q. Have you ever heard of an organization  
22 known as Ohioans Against Lawsuit Abuse?

23 A. No, but at one time I chaired an  
24 organization called Hoosiers Against Lawsuit Abuse.

1 I would imagine it's a similar organization. It's  
2 something to try to -- again, the problem is when  
3 you talk about tort reform, nobody knows except  
4 attorneys what torts are and what it's about. If  
5 you want to talk to the public, you come up with  
6 something so they have a little better understanding  
7 what's going on. But I don't know anything about  
8 the organization itself, who was a part of it and  
9 what they do and when their meetings are, anything  
10 like that.

11 Q. Do you know an individual named Roger  
12 Geiger?

13 A. No.

14 Q. I believe you testified that you're not a  
15 registered lobbyist in any state?

16 A. Pardon?

17 Q. You're not a registered lobbyist in any  
18 state?

19 A. I am registered, and again this will  
20 depend -- and I'm not specifically familiar enough  
21 with the Ohio law. I'm registered as, what is it,  
22 lobbyist employer. I think I am also registered as  
23 a registered lobbyist. I think I'm registered both  
24 ways.

1 Q. In the State of Ohio?

2 A. In the State of Ohio. And I know that's  
3 a common practice in all of the states that I'm  
4 involved in. But I believe I'm registered both  
5 ways. I may be wrong.

6 Q. But it's your testimony here today that  
7 you do not personally engage in direct lobbying  
8 activities with governmental officials in the State  
9 of Ohio?

10 A. As I said at the outset of this, in the  
11 beginning, at one and the same time I can defend  
12 that everything that I do has to do with lobbying  
13 and that very little of what I do has to do with  
14 lobbying. You tell me what you mean by lobbying,  
15 and I'll tell you what I do. If you're talking  
16 about lobbying as direct face to face, sit down and  
17 run your rap at specific governmental officials,  
18 elected or appointed, I do very little of that,  
19 almost none.

20 If you're talking about activities that  
21 relate to the development of a lobby strategy on  
22 behalf of the industry and coordination of lobby  
23 activities, that is a hundred percent of what I do  
24 in four states. You know, they aren't paying me

1 because I'm beautiful. They aren't paying me  
2 because I can sing. They're paying me because of my  
3 ability to work within the lawful confines of  
4 government, business and association activities to  
5 represent the industry, the interests of my  
6 industry. That's what I do and I'm proud of it.  
7 I'm not ashamed of it. I'm not ashamed of my  
8 industry. I used to -- well, enough.

9 MR. SAXBE: Let's take a break.

10 (Recess taken from 7:11 to 7:20.)

11 MR. SAXBE: I have just a couple more  
12 questions.

13 Q. Mr. Rizzo, has the Tobacco Institute been  
14 involved in any grass roots programs in the State of  
15 Ohio?

16 A. The Tobacco Institute?

17 Q. Yes, sir.

18 A. No.

19 Q. Are you familiar with an effort to  
20 organize bowling alley operators in the city of  
21 Cincinnati with respect to smoking issues?

22 MS. SHERMAN: Is this during the time  
23 frame?

24 MR. SAXBE: Yes.

1 A. No, I'm not.

2 Q. With respect to the Tobacco Institute and  
3 its national office, would you describe the Tobacco  
4 Institute as a national, regional or state  
5 organization?

6 A. On that basis it's really all of those  
7 things because we are -- and, again, in my  
8 experience different industries will array  
9 themselves in different fashions. You will have a  
10 national association that will be formed because  
11 there were state associations that perhaps predated  
12 it and they come together and form a national  
13 association or it may have been vice versa. Because  
14 of the state activities function of the Tobacco  
15 Institute -- see, for a long time the tobacco  
16 companies did not have, any of the tobacco companies  
17 did not have their own contract lobbyists. All of  
18 the lobbying on behalf of the industry was done by  
19 the institute. This was back in the day when you  
20 could say tobacco without ducking behind a pillar.  
21 And the Tobacco Institute did the lobbying at the  
22 state level and at the federal level on behalf of  
23 the industry.

24 By and large, the companies themselves

1 since at least in modern times, since post World War  
2 II have been multi involved in more than one  
3 industry, more than one type of activity, their  
4 manufacturers, their distributors, many different  
5 products, that type of thing, they would to the  
6 degree that -- you know, the Tobacco Institute would  
7 handle the things that the industry agreed to as  
8 industry positions on things that were common to the  
9 industry. Things that were individual to individual  
10 members they would handle either through other  
11 association activities or through other contract  
12 lobbyists they had that represented other facets of  
13 their company that was not part of the tobacco  
14 industry.

15 In more recent times companies began to  
16 hire their own tobacco -- they've always had their  
17 public affairs, government affairs people, but they  
18 began to hire their own lobbyists at the state level  
19 and the local level. Today still not all the  
20 companies do. Lorillard does not have anyone that  
21 lobbies for them. They did rely totally and  
22 completely upon the Tobacco Institute to provide  
23 their lobby activity at the state and federal level  
24 totally. So it's sort of all over the map.

1                   So the Tobacco Institute had facets that  
2                   were a little different, a little unique to the way  
3                   this industry grew up, but basically every  
4                   association reflects the uniqueness of that industry  
5                   and the climate in which it grew up and a whole  
6                   bunch of things.

7                   Q.               When you make your regular reports to the  
8                   Tobacco Institute, do you circulate those to your  
9                   member organizations or is that done at the national  
10                  level?

11                  A.               Basically -- well, when I make my  
12                  reports, I mean, how do you mean?

13                  Q.               I believe you testified earlier, and if  
14                  my memory fails me, again, correct me, but you  
15                  indicated that you make a regular report on what's  
16                  happening in Region II to Washington. Do you  
17                  circulate that directly to any of your member  
18                  organizations?

19                  A.               Yeah, well, basically those reports as to  
20                  what's going on then at the state are put together  
21                  by the state activities division and then are  
22                  distributed to the company reps at the association  
23                  level who serve as the policy body to decide what  
24                  issues are going to be association activities, what



1 the position of the industry association is going to  
2 be. So that's how that network goes. It goes up to  
3 them and then from them to -- basically these people  
4 tend to be the bosses of the people that I relate to  
5 with the companies at my level.

6 Q. Do you circulate those reports to members  
7 of your Tobacco Team in Ohio?

8 A. No.

9 Q. I saw a document that is out of the time  
10 frame but I'll ask you to look at to discuss whether  
11 or not similar documents exist within the time  
12 frame, and this will be my final exhibit. I'll give  
13 you what is marked as Exhibit 28, and I recognize  
14 this is dated in 1986. Have you ever seen this  
15 document before?

16 A. I don't think this is a TI document.  
17 This was 1985 and 1986.

18 MS. WATTERS: I would just note for the  
19 record that the Bates stamps at the bottom of the  
20 documents suggest that it was produced by TI. I  
21 believe in perhaps the Kansas litigations.

22 MR. HART: I would note for the record  
23 that the fact that the Tobacco Institute may have  
24 produced a document doesn't mean it's a TI

1 document.

2 Q. And my question, Mr. Rizzo --

3 A. I have never seen anything remotely  
4 similar to this. And if I saw it, I would look  
5 askance at it.

6 Q. Is there any similar type of evaluation  
7 of resources which is conducted by you with other  
8 regional vice-presidents with respect to activities  
9 of the Tobacco Institute during the period of time  
10 that we're referencing here?

11 A. No.

12 MS. SHERMAN: Objection.

13 A. These are the ravings of governmental  
14 lunatics. I don't know who did it, but if they did  
15 it today, somebody ought to shoot them.

16 MR. SAXBE: Well, Mr. Rizzo, I want to  
17 thank you for your attendance, your frankness and  
18 your cooperation. And I have no further questions.

19 MR. HART: Ten minutes max.

20 MR. SCHWEPE: Can I question what's going  
21 on? I thought this was a discovery deposition.

22 MR. SAXBE: I have no objection. He can  
23 question his own witness here.

24 MR. HART: Since the notice invites and

1 states cross-examination, I have no conception what  
2 you mean.

3 MR. SCHWEPE: As on cross. That's how he  
4 was called. The witness as on cross.

5 MS. WATTERS: That allows us in the State  
6 of Ohio to ask him leading questions.

7 MR. SCHWEPE: Right. That does not mean  
8 that you have the opportunity.

9 MS. WATTERS: It's an Ohio particular  
10 thing that's done with notices.

11 MS. SHERMAN: There's no objection.  
12 Let's proceed.

13 MR. HART: Let's mark that as the next  
14 exhibit.

15 - - - - -  
16 Thereupon, Deposition Exhibit  
17 29 is marked for purposes  
18 of identification.

19 - - - - -  
20 DIRECT EXAMINATION

21 BY MR. HART:

22 Q. Could you take a look at Exhibit 29.

23 MS. WATTERS: We would prefer to have  
24 this labeled as a Defendant's Exhibit rather than a

1 Plaintiff's exhibit.

2 Q. Do you recognize that list?

3 A. Yes, I've seen it.

4 Q. Can you describe it for the record?

5 A. This is a list of the people who make up  
6 the Coalition for Responsible Tobacco Retailing,  
7 which is the organization that puts forth the We  
8 Card program, and it lists the associations and  
9 organizations that are involved in that effort.

10 Q. Could you just compare that quickly to  
11 the list of members of the Coalition for Responsible  
12 Tobacco Retailing that appears in Exhibit 25? I  
13 think it's the last page of the exhibit.

14 A. This was when the organization was set  
15 up. There have been some additions to the list.

16 Q. My question was is the number of industry  
17 groups and coalitions supporting the Coalition for  
18 Responsible Tobacco Retailing growing or shrinking?

19 A. It is growing.

20 Q. Could you identify for the record a  
21 couple of terms that came up today, the first one --  
22 and I state for the record I'm not from Ohio. The  
23 first one being ALEC?

24 A. The American Legislative Exchange

1 Council. It's a -- which is an organization  
2 basically it's a -- I would describe it as a  
3 conservative, free marketplace organization that was  
4 set up late '60s, early '70s maybe.

5 Q. How about could you identify for the  
6 record the NGC?

7 A. That probably should be NGA, National  
8 Governors Association and others would be the NCSL,  
9 National Council of State Legislatures, another  
10 organization -- there are a number of these types of  
11 basically compact organizations to which state and  
12 local governments belong. What's the big one down  
13 in Ironwood Pike down in Louisville? I'm losing my  
14 mind, it's a blank. At any rate, those are the  
15 acronyms that I was making reference to.

16 Q. Could you tell us for the record the age  
17 of Pete O'Grady?

18 A. Pete O'Grady is 78, I believe.

19 Q. And he is TI's contract lobbyist?

20 A. Yes.

21 Q. In Columbus? Do you know how many other  
22 organizations Mr. O'Grady lobbies on behalf of?

23 A. No, I do not.

24 Q. I think you said this earlier today, but

1 I don't think the grammar was perfect. So I want to  
2 ask you, does the Tobacco Institute to your  
3 knowledge generate any information for distribution  
4 to the general public in Ohio?

5 MS. WATTERS: Objection.

6 A. No.

7 Q. You have been asked about an awful lot of  
8 trade associations today by my countenance about a  
9 score of trade associations, ranging from such  
10 entities as the Ohio Grocers Association, Ohio Candy  
11 and Tobacco Distributor Association, the Ohio  
12 Association of Retailers, the Ohio Tobacco Dealers  
13 Association, the Ohio Council of Retail Merchants,  
14 the Ohio Convenience Store Operators, the Ohio  
15 Petroleum Council. Are there counterpart groups in  
16 the other three states that you supervise for the  
17 Tobacco Institute?

18 A. Absolutely.

19 Q. And does the Tobacco Institute ever  
20 provide financial contributions to, for example, the  
21 Michigan Licensed Beverage Association or the  
22 Illinois Council of Retail Merchants?

23 A. Yes.

24 Q. Sitting here today Mr. Saxbe elicited the

1 fact that the institute during the relevant period  
2 contributed \$10,000 to the Ohio Association of  
3 Tobacco and Candy Distributors.

4 A. Yes.

5 Q. Do you know how much during that same  
6 period the Tobacco Institute contributed to the  
7 Michigan Association of Tobacco and Candy  
8 Distributors?

9 A. Michigan was, I believe, 20, either 20 or  
10 25 and I know that Illinois was 20,000. Indiana is  
11 never.

12 Q. And why is -- for purposes of the period  
13 which is at issue here, which is the two-year period  
14 prior to May of 1997, how would you compare the  
15 amount of time and interest that you gave  
16 developments in Ohio by comparison to the other  
17 three states?

18 A. Very little going on in Ohio. As I said,  
19 the overwhelming situation that was going on, has  
20 been going on in Ohio for the last two plus years,  
21 has been involved in the whole tax situation, and  
22 that's pushing everything else out. There have been  
23 tobacco bills filed, but in terms of legislative  
24 momentum and activity there has been very little

1 going on. The primary activity that was involved,  
2 has been involved in Ohio since I've been with TI in  
3 July of '96 has involved the issue of cigarette tax  
4 increase. Then in January of this year, which is  
5 beyond the time, we had Senate Bill 221, Senate Bill  
6 220, which were filed. Those were late filings in  
7 the late days of the session, but there has been  
8 very little legislatively going on that involves  
9 tobacco.

10 Q. You're talking about the state level of  
11 Ohio?

12 A. Yes.

13 Q. How many county and local governments are  
14 there in Ohio, if you know?

15 A. Way too many. I have no idea how many  
16 counties there are in Ohio. I know how many there  
17 are in Indiana, 81. How many counties are there in  
18 Ohio?

19 MR. KAIRIS: 88.

20 Q. If you look at Exhibit 24, which was the  
21 memorandum from Jones, Day, Reavis & Pogue, it  
22 refers to regulations promulgated by the Board of  
23 Health of Knox County, Ohio?

24 A. Uh-huh.



1 Q. Do you know whether tobacco use, sales,  
2 advertising and so on is regulated at the county  
3 level and the local level as well as the state  
4 level?

5 A. Yes, it is in Ohio.

6 Q. And what are your avenues for learning  
7 about legislative and regulatory developments?

8 A. At the local level?

9 MS. WATTERS: Objection.

10 Q. At the local level and at the county  
11 level.

12 A. Basically we learn of it through a couple  
13 sources, either the type of clips that you  
14 distributed earlier that PM provides me with in  
15 terms of reporting what's going on in local  
16 newspapers. We will learn it through the retailers,  
17 through the wholesalers or through the merchandisers  
18 of the tobacco companies, the guys that go out and  
19 put the product in the stores and pay the  
20 face-to-face call with the retailer in the field.

21 That's how we learn what's going on in  
22 local government, get an idea of whether or not  
23 there's anything going on with regard to tobacco.  
24 But there is no -- and we try to provide to the

1 extent that you can a repository of information  
2 about what's going on, but trying to collect and to  
3 know at any one point in time what's going on in a  
4 local government is a little like trying to herd  
5 cats. There is no common -- it's a very difficult  
6 job to find out, A, what's going on, B, where it is  
7 in the legislative process and, C, even if they want  
8 to talk to you about it after it's been law.

9 Q. I think you just said this but is one of  
10 your sources about finding out what's going on the  
11 kind of statewide trade associations you've been  
12 asked about today?

13 MS. WATTERS: Objection.

14 A. Absolutely.

15 Q. Mr. Saxbe elicited the fact that those  
16 trade associations sometimes do more than lobbying  
17 for their own members, if you could look at Exhibit  
18 13.

19 A. Yes.

20 Q. He asked you about this letter from the  
21 Ohio Council of Retail Merchants, the first line to  
22 the effect that the CRM was constantly looking for  
23 new ways to better serve our members, quote, one way  
24 besides lobbying is membership services. Do you see

1 that?

2 A. That's right.

3 Q. And if you could also pull out for  
4 side-by-side comparison Exhibit 23, which is the  
5 1995 edition of the Ohio Association of Tobacco and  
6 Candy Distributors?

7 A. Yes.

8 Q. If you would look at the third page of  
9 that -- no, it's the third page of my excerpt, but  
10 you got a whole copy, it's the fifth page of the  
11 exhibit.

12 A. Mission statement?

13 Q. Right.

14 A. Yes.

15 Q. And do you see that the first example of  
16 the membership programs offered by the Ohio  
17 Association of Tobacco and Candy Distributors is,  
18 quote, effectively advocate and represent the common  
19 interests of the membership in all areas of public  
20 policy?

21 A. Yes.

22 Q. And do you see that the second is foster,  
23 improve communications in trade associations among  
24 all industry constituents?

1 A. Yes.

2 Q. Consistently and accurately inform the  
3 membership, the trade and where appropriate the  
4 public of industry issues, environmental changes and  
5 other pertinent matters of interest?

6 A. Yes.

7 Q. Looking back at Exhibit 13, does the  
8 Tobacco Institute give money to the Council of  
9 Retail Merchants because it provides membership  
10 services to its members such as reduced workers'  
11 compensation program costs?

12 A. No.

13 Q. Does the Tobacco Institute give money to  
14 the groups because they could save the Tobacco  
15 Institute money in its own expenses?

16 A. No.

17 Q. Does the Tobacco Institute give money to  
18 these local trade associations because the trade  
19 associations -- withdrawn. Withdrawn.

20 MR. HART: I'm trying not to lead.

21 MS. WATTERS: Trying may be the operative  
22 word.

23 Q. Mr. Saxbe elicited the fact that none of  
24 the local trade associations lobby on behalf of the

1 Tobacco Institute.

2 A. That's right.

3 Q. Do you know whether the views and  
4 lobbying positions of the local organizations ever  
5 coincide with the views and lobbying positions of  
6 the Tobacco Institute?

7 A. Yes, they do. There are times when they  
8 will coincide and there are times when they  
9 disagree. That even happens within your own  
10 industry. You don't always have agreement within  
11 your own industry as to priorities. But the one  
12 thing in my experience that I have found that's  
13 common to all membership associations is they  
14 represent the members that pay their bills or they  
15 don't exist.

16 Q. Does TI ever ask any of those local trade  
17 associations to support TI's lobbying position or  
18 TI's view about a certain legislative or regulatory  
19 development?

20 A. I've never lobbied a lobbyist.

21 Q. Do you know whether any of those local  
22 organizations ever ask TI to support their views on  
23 pending regulations or legislation?

24 A. No. Generally what happens, we talk

1 about the Tobacco Team meetings, we talk about the  
2 issues that we have in common and where we are on  
3 those issues. The retailers are not at all hesitant  
4 to say where they are about the tobacco -- about  
5 tobacco issues. That may or may not be precisely  
6 the position that the Tobacco Institute wants. The  
7 companies state theirs. Everybody states theirs and  
8 we figure out where there's common ground. Where we  
9 can get together we work together and where we can't  
10 we don't.

11 There's nothing magic or nefarious about  
12 it. You just sit down and say, you know, do you  
13 agree with this, do you not agree with that. And  
14 that's the way the process goes but there's no --  
15 you know, in all of my days of involvement in  
16 legislative work from my first days as staff with  
17 the Indiana General Assembly, through the Governor's  
18 office, up through today the one thing you're always  
19 trying to do is coalition bill, try to find as many  
20 people as you can that are in the same boat that you  
21 are and work together. I mean, that's, you know --  
22 and at some point people get off the boat at  
23 different places, but you go as far as you can and  
24 you take it from there.

1 MR. HART: Thank you very much,  
2 Mr. Rizzo.

3 MR. SAXBE: I just have a followup.

4 - - - - -

5 RECROSS-EXAMINATION

6 BY MR. SAXBE:

7 Q. As a member or associate member of these  
8 organizations TI is entitled to avail itself of the  
9 rights and privileges of membership, isn't it?

10 MS. SHERMAN: Objection.

11 A. I would suppose we are.

12 Q. You don't have to accept the services  
13 they offer, but you can if you want to?

14 A. So?

15 MS. WATTERS: I take it that's yes?

16 THE WITNESS: That's so? Whatever.

17 A. Yes, okay, so?

18 MR. SAXBE: Thank you, Mr. Rizzo. Do you  
19 want to tell him he's entitled to read this.

20 MS. SHERMAN: Yes, he is.

21 MR. SAXBE: You're entitled to read this  
22 document.

23 MS. SHERMAN: We will not waive  
24 signature.

1                                   - - - - -  
2                   Thereupon, the aforementioned proceedings  
3                   conclude at 7:52 o'clock p.m.  
4                                   - - - - -



1  
2  
3  
4  
5  
6  
7  
8 RAYMOND W. RIZZO  
9

10  
11 IN WITNESS WHEREOF, I have hereunto set  
12 my hand and affixed my seal of office at  
13 \_\_\_\_\_, Ohio, on this \_\_\_\_\_ day of  
14 \_\_\_\_\_, 19 \_\_\_\_.

15  
16  
17  
18 Notary Public in and for the State of Ohio.  
19

20  
21 My Commission expires: \_\_\_\_\_  
22

23  
24 Spectrum Job No.: 7602

1 State of Ohio : C E R T I F I C A T E  
2 County of Franklin :

3 I, Eileen M. Hines, a Notary Public in and for  
4 the State of Ohio, do hereby certify the  
5 within-named RAYMOND W. RIZZO was by me first duly  
6 sworn to testify to the whole truth in the cause  
7 aforesaid; testimony then given was by me reduced to  
8 stenotypy in the presence of said witness,  
9 afterwards transcribed by me; the foregoing is a  
10 true and correct transcript of the testimony so  
11 given; and this deposition was taken at the time and  
12 place as specified on the title page.

13 I do further certify I am not a relative,  
14 employee or attorney of any of the parties hereto,  
15 and further I am not a relative or employee of any  
16 attorney or counsel employed by the parties hereto,  
17 or financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand and affixed my seal of office at Columbus,  
20 Ohio, on April 23, 1998.

21 Eileen M. Hines  
22 Eileen M. Hines, Notary Public - State of Ohio  
23 My Commission expires August 16, 1999

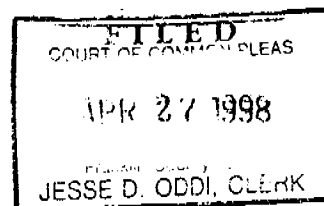
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APR 27 1998

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## I N D E X

	<u>Plaintiff's Exhibit No.</u>	<u>Page No.</u>
1		
2		
3	1 - Resume of Raymond Rizzo	9
4	2 - Affidavit of William A. Adams	19
5	3 - Map, The Tobacco Institute, State Activities Division	30
6	4 - Press release	116
7	5 - Collection of news clippings, cover sheet from Scott Fisher	132
8		
9	6 - Joint Legislative Ethics Committee, updated registration statement	134
10		
11	7 - Joint Legislative Ethics Committee, updated registration statement	134
12	8 - "The Unintentional Consequences of Raising Cigarette Taxes in Ohio"	144
13		
14	9 - Memo 4-7-95 from Rick Ayish	146
15	10 - Memo 1-30-98 from Raymond Rizzo	147
16	11 - Memo 2-3-98 from Raymond Rizzo	147
17	12 - Tobacco Institute, Coalition meeting 1-9-95	157
18	13 - Letter 9-17-96 to Dear Member from John Mahaney	161
19	14 - Letter 6-19-96 to Member from Mahaney	163
20	15 - Council update 1-12-96	164
21	16 - Council update 10-18-96	164
22	17 - Food View 6-21-96	164
23	18 - Food View	165
24	19 - Food View	166



1	20 - Action Report May 1997	169
2	21 - Check 3-10-95	172
3	22 - Letter 1-24-97 to Rizzo from Advent	175
4	23 - Ohio Association of Tobacco & Candy Distributors, 1995 Edition	
5	24 - Letter 8-23-95 from Lehman	180
6	25 - Letter December 1995 to Jackson	184
7	26 - Advertisement	188
8	27 - Press release 12-19-95 from Coalition for Responsible Tobacco Retailing	
9		
10	28 - Field staff, Evaluation of Resources	198

Deposition Exhibit No.

Page No.

12	29 - Coalition for Responsible Tobacco Retailing, list of organizations	200
----	-------------------------------------------------------------------------	-----

Examination By

Page No.

15	Mr. Saxbe - Cross	8
16	Mr. Hart - Direct	200
17	Mr. Saxbe - Recross	212

(Exhibits attached to transcripts.)